TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19[illegible].

No. 306.

JOHN A. BENSON, APPELLANT,

vs.

WILLIAM HENKEL, UNITED STATES MARSHAL FOR THE SOUTHERN DISTRICT OF NEW YORK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED JULY 2, 1904.

(19,405.)

(19,408.)

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1 Petition.

United States Circuit Court, Southern District of New York.

In the Matter of the Application of JOHN A. BENSON for Writs of *Habeas Corpus* and Certiorari.

To the circuit court of the United States for the southern district of New York:

The petition of John A. Benson to this honorable court respectfully shows:

First. That your petitioner is a citizen and resident of the State of California.

Second. That your petitioner is imprisoned and restrained of his liberty in the custody of William Henkel, United States marshal for the southern district of New York, and is now detained in the custody of said marshal, in the borough of Manhattan city of New York, and southern district of New York, under color of a warrant issued by United States Commissioner Shields, upon a complaint purporting to charge petitioner with violation of a law of the United States; all as more particularly hereinafter set forth.

Third. That the cause or pretense of the imprisonment, restraint and detention aforesaid, according to the best of petitioner's knowledge and belief, is an order of commitment of petitioner to the custody of said marshal made and issued by John A. Shields, United States commissioner for the southern district of New York,
2 to await the order of the United States district judge in and for the southern district of New York, upon proceedings to be taken by the United States attorney for the removal of petitioner to the District of Columbia for trial.

Fourth. That on the 31st day of December, 1903, your petitioner was arrested in the borough of Manhattan, city of New York, and southern district of New York, upon a warrant issued by said United States Commissioner Shields, and held in bail for examination. That said warrant of arrest was issued solely upon a written complaint of one William J. Burns, verified December 31, 1903, which sought to charge your petitioner with violations of section 5451 of the United States Revised Statutes. That said complaint was made wholly upon information and belief, and the complainant's belief was stated to be based upon a copy of an indictment against your petitioner, said to have been found in the supreme court of the District of Columbia at a criminal term thereof, on the 30th day of December, 1903, a copy of which indictment was annexed to said complaint and made a part thereof. True copies of said complaint and of said indictment are hereto annexed, marked respectively Exhibits A and B, and made a part of this petition.

Fifth. That subsequently to said arrest, witnesses were examined in behalf of the prosecution at various times before said United States commissioner, and thereafter, to-wit: on the 4th day of May, 1904, said commissioner made his order of commitment aforesaid, and thereupon your petitioner was taken into the custody of the said United States marshal.

3 *Sixth.* That the aforesaid arrest, commitment, detention, restraint and imprisonment of your petitioner are illegal, without due process of law and contrary to and in violation of the provisions of the Constitution and laws of the United States. That the complaint and the indictment alleged to have been found in the District of Columbia, upon which your petitioner was arrested, charge petitioner with no crime against the United States and show no violation by defendant of section 5451 of the United States Revised Statutes or any other statute of the United States. That the evidence produced before the United States commissioner did not disclose or tend to disclose probable cause to believe that your petitioner has committed the crime sought to be charged against him or any other crime against the United States. That the complaint and indictment disclose no crime which is triable by the supreme court of the District of Columbia. That said United States commissioner had no jurisdiction or authority to order the arrest or commitment of petitioner, and the alleged process, under color of which your petitioner is restrained of his liberty, is unauthorized, illegal and void.

Wherefore, your petitioner prays that a writ of *habeas corpus* issue, directed to William Henkel, marshal of the United States for the southern district of New York, and to any person having your petitioner in custody under the authority of said marshal, commanding them to produce the body of your petitioner before this court forthwith, together, *together* with the cause of such imprisonment and detention; and further that a writ of certiorari issue, directed to John A. Shields, United States commissioner, in and for the southern district of New York, in aid of the writ of *habeas corpus* aforesaid, requiring the aforesaid John A. Shields to return

4 and certify to this court forthwith the cause of the imprisonment of your petitioner, and true copies of the proceedings, complaint, warrant, depositions, examinations, determinations, commitments and record had before him, for such action as may be proper in the premises.

Dated, May 4th, 1904.

JOHN A. BENSON, Petitioner.

BOARDMAN, PLATT & SOLEY,
Attorneys for Petitioner, 35 Wall Street, New York City.

UNITED STATES OF AMERICA, Southern District of New York, } ss:

John A. Benson, being duly sworn, deposes and says that he has read the foregoing petition, and knows the contents thereof, and that the same is in all respects true.

JOHN A. BENSON.

Subscribed and sworn to before me this 4th day of May, 1904.

[L. S.] HENRY W. CLARK,
Notary Public, New York County.

5 (Endorsed:) U. S. circuit court, southern district of New York.—In the matter of the application of John A. Benson for writs of *habeas corpus* and certiorari.—Petition.—Boardman, Platt & Soley, attorneys for petitioner, No. 35 Wall street, New York city.—U. S. circuit court, southern district of New York, Filed May 4, 1904, John A. Shields, clerk.

6 United States Circuit Court, Southern District of New York.

In the Matter of the Application of JOHN A. BENSON for Writs of *Habeas Corpus* and Certiorari. Case No. 1.

Stipulated, that Exhibit A annexed to the petition for the writs of *habeas corpus* and certiorari herein, is a copy of the complaint or affidavit of William J. Burns, which is made a part of the return of United States Commissioner John A. Shields herein, and that Exhibit B annexed to said petition herein is a copy of the indictment found by the grand jury in the District of Columbia, which is also made a part of the return of said Commissioner Shields herein; and that said complaint and said indictment shall be printed in the record on appeal to the United States Supreme Court in this case only once, namely, as parts of the return of said commissioner to the writs; but that said complaint and said indictment, as so printed, shall, for all purposes of said appeal, be taken, and may be referred to by either party, as exhibits annexed to said petition, as fully as if the same were separately printed in the record as such exhibits.

Dated: June 17, 1904.

BOARDMAN, PLATT & SOLEY,
Attorneys for Petitioner-Appellant.
HENRY L. BURNETT,
United States Attorney.

(Endorsed:) U. S. circuit court, southern district of New York, Filed Jun- 21, 1904, John A. Shields, clerk.

7 The President of the United States of America to William Henkel, United States marshal for the southern district of New York, and any person having custody of John A. Benson, under the authority of said United States marshal, Greeting:

We command you, that you have the body of John A. Benson by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever name the said John A. Benson is called or charged, before the circuit court of the United States, for the southern district of New York, held in the Post Office building, in the borough of Manhattan, city, county and State of New York, on May 4th, 1904 at 2.30 o'clock in the afternoon, to do and receive what shall then and there be considered concerning said John A. Benson; and have you then there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 4th day of May, 1904.

[SEAL.] JOHN A. SHIELDS, Clerk.

The above writ is hereby allowed.

E. H. LACOMBE,
United States Circuit Judge.

8 Affidavit of Service.

U. S. Circuit Court, So. Dist. of N. Y.

Matter of JOHN A. BENSON.

STATE OF NEW YORK,
County of New York, Southern } *ss:*
District of New York,

Henry W. Clark of the borough of Manhattan, city of New York, being duly sworn, says that he is over 21 years of age, and that on the 4th day of May, in the year one thousand nine hundred and four, at 11.20 a. m. he served a copy of the annexed writ of *habeas corpus* together with a copy of the petition on which the same was granted upon William Henkel, U. S. marshal, for the southern district of New York by delivering the same to him personally and at the same time showing him the original writ hereto annexed.

HENRY W. CLARK.

Sworn to before me this 4th day of May, 1904.

[SEAL.] JAMES T. CRANE,
Notary Public, New York Co.

(Endorsed:) United States circuit court, southern district of New York.—Matter of John A. Benson.—Writ of *habeas corpus*. (Bribery case)—Boardman, Platt & Soley attorneys for petitioner, 35 Wall street, New York.—U. S. circuit court, southern district of New York. Filed May 4, 1904. John A. Shields, clerk.

9 In obedience to the within writ signed by the Hon. E. Henry Lacombe, U. S. circuit judge for the southern district of New York, I produced the body of John A. Benson, who is in my custody, before this court, May 4th, 1904, at 2:30 p. m. in compliance with the said writ of *habeas corpus*.

Dated New York, May 4th, 1904.

WILLIAM HENKEL,
U. S. Marshal, S. D. N. Y.

Hearing adjourned until May 19, 2 p. m. Prisoner remanded in the mean time, but bail may be taken, to be approved by the clerk (or cash bail) in the amount of ten thousand dollars.

May 4, 1904.

E. H. LACOMBE, U. S. C. J.

Defendant discharged on bail in accordance with above order of Judge Lacombe.

JOHN A. SHIELDS,
U. S. Commissioner.

Argued decision reserved, prisoner to remain on bail.

May 19, 1904.

E. H. LACOMBE.

U. S. circuit court, southern district of New York. Filed May 4, 1904, John A. Shields, clerk.

10 The President of the United States of America to John A. Shields, United States commissioner in and for the southern district of New York, Greeting:

We command you that you certify fully and at large to the United States circuit court in and for the southern district of New York, held in the Post Office building, in the borough of Manhattan city, county and State of New York, on May 4th 1904 at 2:30 o'clock in the afternoon the day and cause of the imprisonment of John A. Benson by you detained, as is said, by whatsoever name the said John A. Benson shall be called or charged, and that you further certify fully and at large the cause of the imprisonment of said John A. Benson and true copies of the proceedings, complaint, warrant, depositions, examinations, determinations, commitments and record had before you in the matter of the United States against John A. Benson, upon the charge of violations of section 5451 of the United States Revised Statutes; and have you then there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 4th day of May, 1904.

JOHN A. SHIELDS, Clerk.

Allowed.
E. H. LACOMBE,
Circuit Judge.

11 Affidavit of Service.

U. S. Circuit Court, So. Dist. of N. Y.

Matter of JOHN A. BENSON.

STATE OF NEW YORK,
County of New York, Southern } ss:
District of New York,

Henry W. Clark, of the borough of Manhattan, city of New York, being duly sworn, says that he is over 21 years of age, and that on the 4th day of May in the year one thousand nine hundred and four, at 11:20 a. m. he served a copy of the annexed writ of certiorari together with a copy of the petition on which the same was granted upon John A. Shields, U. S. commissioner for the southern district of New York, by delivering the same to him personally and at the same time exhibiting to him the original writ hereto annexed.

HENRY W. CLARK.

Sworn to before me this 4th day of May, 1904.

JAMES. T. CRANE,
[SEAL.] Notary Public, N. Y. Co.

(Endorsed:) United States circuit court, southern district of New York.—Matter of John A. Benson.—Writ of certiorari. (Bribery case)—Boardman, Platt & Soley, attorneys for petitioner, 35 Wall St. New York city.—U. S. circuit court, southern district of New York, Filed May 4, 1904, John A. Shields, clerk.

12 UNITED STATES OF AMERICA }
vs.
JOHN A. BENSON. }

To the circuit court of the United States for the southern district of New York:

I, John A. Shields, United States commissoner for the southern district of New York, in obedience to the foregoing writ of certiorari do hereby certify, that the papers hereunto annexed and returned herewith contain the record and proceedings had before me in the above entitled matter.

In testimony whereof I have hereunto subscribed my name and affixed my seal, this fourth day of May, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States of America the one hundred and twenty-eighth.

JOHN A. SHIELDS,
[SEAL.] U. S. Commissioner, S. D. of N. Y.

13 Approved
H. L. BURNETT, U. S. Att'y.

UNITED STATES vs. JOHN A. BENSON. } Violation of Sec. 5451 R. S., Bribery of Officer of U. S.

SOUTHERN DISTRICT OF NEW YORK, ss:

William J. Burns, operative of the secret service of the United States of the Treasury Department of the United States, on duty in the city of Washington, being duly sworn, says, on information and belief, that on the 1st day of January, in the year of our Lord, 1901, and from thence until the 1st day of April in the year of our Lord 1903, John A. Benson was engaged with Frederick A. Hyde for their profit, gain, use and benefit at the city of San Francisco, and State of California, in the business of unlawfully obtaining from the said United States, the possession and use of and title to public lands thereof outside of forest reserves established under the laws of the United States, and unlawfully appropriating such public lands in exchange for and in lieu of lands of the States of California and Oregon, known as school lands, obtained by them before and during the said period from the said State in a manner as it was charged, contrary to the laws of the said States respectively, that is to say, by a false and fraudulent practice of them, the said John A. Benson and Frederick A. Hyde, whereby title to and possession of divers large tracts from such school lands, being lands lying within the limits of such forest reserves and open to purchase from those States, of citizens thereof respectively, in quantities not exceeding
14 for each of such citizens, 640 acres in the said State of California, and 320 acres in the said State of Oregon, upon application being made to the proper authorities of the said States respectively by any such citizen supported by his affidavit and showing his qualifications to make such purchase, and among other things, as before and during the said period, was required by the laws of the said States, his intention to purchase such lands in good faith and for his own benefit, and that he had made no contract or agreement to sell the same, were knowingly obtained from the said States by the said John A. Benson and Frederick A. Hyde by there causing to be made and filed with the said authorities, applications for the purchase of said school lands, and assignments of the same, and of the certificates of purchase thereof in the names of fictitious persons, and in the names of persons not really desiring and not qualified to purchase the same (for the use of which last mentioned names for such purposes, the said John A. Benson and Frederick A. Hyde corruptly procured by the payment to such persons respectively of small sums of money, and also by falsely representing and causing to be represented to most of such persons, that they were merely disposing of their respective rights to purchase such school lands), and by their causing such applications to be supported by forged and fraudulent affidavits, and affidavits false

and known to the said John A. Benson and Frederick A. Hyde to be false, in this, that they purported to be some of the sworn affidavits of real persons, and others the sworn affidavits of the persons whose names were signed thereto; whereas in truth and in fact the former were the affidavits of fictitious and were not the affidavits of real persons, or affidavits sworn to by any person, and the latter were not the *bona fide* affidavits of the persons whose names were signed thereto because such latter affidavits stated that the affiants therein were persons qualified under the laws of the State of California, or of the said State of Oregon, as the case might be, to make such application, and to purchase such school lands by reason amongst other things, or their intending to purchase the same in good faith, and for their own benefit respectively, and of their having made no contract or agreement to sell the same; whereas in truth and in fact, none of such real persons intended to purchase such lands for his own use or benefit at all, but was either merely innocently acting upon the said false representations of the said John A. Benson and Frederick A. Hyde or knowingly aiding and assisting them in their said fraudulent practices, and whereas, also some of the said latter affidavits were not the *bona fide* affidavits of the persons whose names were signed thereto respectively because though they purported to be sworn to by the persons whose names were signed thereto, they were never sworn to at all in truth and in fact by any of these persons.

15

And deponent further says, that during the said period, to wit, on the 9th day of January in the year of our Lord, 1903, an investigation of the said alleged unlawful appropriation by the said John A. Benson and Frederick A. Hyde of the said public lands of the said United States was ordered by the Secretary of the Interior of the said United States for the purpose of ascertaining the facts pertaining to such alleged unlawful appropriation of the said public lands, with a view to the rejection and cancellation by the proper officers of the Department of the Interior of the said United States, and of the General Land Office of the said United States of the selection of such public lands made by the said John A. Benson and Frederick A. Hyde or by their agents, and attorneys in their behalf, or in behalf of their assignees or grantees in the performance of their said business, and also with a view to beginning proper legal proceedings for the cancellation of all patents to such public lands so obtained and appropriated by the said John A. Benson and Frederick A. Hyde, and to punishing all persons guilty in connection with the obtaining and appropriating by the said John A. Benson and Frederick A. Hyde of the possession and use of, and title to the public lands of the said United States in the manner aforesaid of violating the criminal laws of the said United States relating to the unlawful entry and appropriation of the public lands thereof, and that such investigation was immediately thereupon begun and carried on by one Arthur B. Pugh, then a special agent

16

in the public land service of the United States, and one Harry E. Steece, then a special agent of the said General Land Office in pursuance of the aforesaid order of the said Secretary of the Interior, and under instructions from the said Secretary of the Interior, that a report of their doings and of all the facts ascertained by them in the premises be transmitted to the said Secretary of the Interior which report, when so transmitted,

17 would be for the exclusive consideration and use of the proper officer of the said Department of the Interior, and of the said General Land Office, and the chief of the special service division in the said General Land Office hereinafter mentioned, and would be the official and secret report of the said special agents, the contents where*by* should not be revealed by such special agents or either of them to any official persons, before or after its being transmitted to the said Secretary of the Interior as aforesaid, and would not be intended for the consideration or use of any person not a proper officer of the said Department of the Interior, or of the said *Department of the Interior, or of the said* General Land Office as aforesaid, and particularly would not be intended for the inspection or use of the said John A. Benson or Frederick A. Hyde, or any person acting in their behalf, or in behalf of either of them, it being true as the deponent charges the fact to be, that such report would be of such a character by reason of its tending to establish the truth of the charge against the said John A. Benson and Frederick A. Hyde, and the facts pertaining to the said unlawful appropriation of the said public lands by them as that if the contents of the same were revealed, to the said John A. Benson, or the said Frederick A. Hyde either directly or indirectly, the securing of evidence to support the said charge, and to establish the facts pertaining to such unlawful appropriation of the said public lands by the said John A. Benson and Frederick A. Hyde would be rendered more difficult and expensive for and to the said United States, if not impossible, and the objects of the said investigation defeated.

18 And deponent further says, that during the period aforesaid, one Woodford D. Harlan was an officer of the said United States, and a person acting for and on behalf of the said United States in an official function under and by virtue of the Department of the Interior of the Government of the said United States, that is to say: chief of the special service division in the said General Land Office at the city of Washington, in the said District of Columbia; that the said Woodford D. Harlan during the said period, by reason of his being such officer and person acting for and on behalf of the said United States in an official function under and by the authority of the said department under the law and regulations theretofore, and in pursuance to law prescribed and promulgated by the Secretary of the Interior of the said United States for the government of the said department and the conduct of its officers, and clerks, and then in force, was charged with certain

duties, amongst others, with the duty of protecting the public lands of the said United States from unlawfully *entering* and appropriating and supervising the work of the special agents employed for such purpose and preparing instructions to such special agents relating to their various duties, with considering when received, the reports of such special agents pertaining to such cases of alleged violation of the laws of the United States relating to public lands, as should be referred to them for investigation, with initiating and taking charge of proceedings looking to the cancellation of such notices and selections of the said public lands as should appear to be unlawful and fraudulent. And with preparing cases for reference to the Department of Justice of the said United
19 States when legal proceedings should become necessary in such cases, either for the cancellation of patents procured by fraudulent means, or to punish persons for violations of the criminal laws relating to the said public lands; and that during such period and by reason of his being and acting as such officer and person, it became and was the duty of the said Woodford D. Harlan then discharging the duties with which he was so charged as aforesaid, to preserve and keep for the exclusive consideration and use of the said proper officers of the said Department of the Interior, and of the said General Land Office all opinions and official reports coming to him, the said Woodford D. Harlan by virtue of his said office, and in his said place of trust concerning such unlawful entries and appropriations and concerning all violations of said laws and investigations thereof, and to not allow any such information or reports or the contents of such reports to be in any manner given or revealed to, or obtained by the persons charged with such violations of the making of such fraudulent entries or appropriations of such public lands.

And deponent further says, that the said John A. Benson, afterward and during the said period, to wit, on the 15th day of March in the year of our Lord 1903, at Washington aforesaid, in the said District of Columbia, well knowing all and singular the premises, unlawfully did give certain money, to wit, the sum of $200. in money of kinds, and denominations to deponent unknown, to him, the said Woodford D. Harlan (he, the said Woodford D. Harlan then and there still being an officer of the said United States as afore-
20 said) with intent then and there on the part of him, the said John D. Benson to induce the said Woodford D. Harlan to do an act in violation of his lawful duty, that is to say, to reveal to him the said John A. Benson when the same should come to his hands and knowledge, in his official capacity the contents of the report of the said special agents pertaining to the investigation aforesaid.

And deponent further says that the said John A. Benson on the said 15th day of March, 1903, at Washington aforesaid in the said District of Columbia in manner and form aforesaid, unlawfully did give money to an officer of the said United States and to a person

then acting for and on behalf of the said United States in an official function under and by virtue of the department of the Government of the said United States, with intent then and there on the part of him, the said John A. Benson to induce the said officer, and person, to do an act in violation of his lawful duty; against the peace of the United States and their dignity and contrary to the form of the statute of the United States in such case made and provided.

And deponent further says that he bases his belief upon the certified and exemplified copy of an indictment against the said John A. Benson found in the supreme court of the District of Columbia, holding a criminal term, at October term thereof, and filed in the said court, on the 30th day of December, 1903.

And the said indictment consists of eight counts and reference is made to the same for greater certainty, and the same is made
21 part of this deposition and is filed herewith marked Exhibit "A," and will be exhibited upon the hearing of this complaint before any U. S. commissioner of the said southern district of New York, entitled to investigate the same.

And deponent further says that he has reason to believe and does verily believe, that the said John A. Benson is not now within the southern district of New York.

WM. J. BURNS.

Sworn to before me this 31st day of December, 1903.

JOHN A. SHIELDS,
U. S. Commissioner.

22 Authentication.

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the said court, do hereby certify that the following copy of indictment, annexed to this certificate, is a true copy of the original on file and of record in said office, and that said original indictment is pending in said court.

Witness my hand and the seal of said court, this 31st day of December, 1903.

[SEAL.]

JOHN R. YOUNG, Clerk,
By H. W. SMITH, Ass't Clerk.

I, Harry M. Clabaugh, chief justice of said court, do certify the foregoing attestation by John R. Young, clerk of the said court, to be in due form.

Witness my hand and seal this 31st day of December, 1903.

HENRY M. CLABAUGH, [SEAL.]
Chief Justice.

I, John R. Young, clerk of said court, hereby certify that the Honorable Harry M. Clabaugh, whose genuine signature is subscribed to the foregoing certificate, was, at the time of signing and attesting the same, chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court, this 31st day of December, 1903.

[SEAL.] JOHN R. YOUNG, Clerk,
By H. W. SMITH, Ass't Clerk.

23 Ex. A.

In the Supreme Court of the District of Columbia, Holding a Criminal Court, of the October Term, in the Year of Our Lord Nineteen Hundred and Three.

DISTRICT OF COLUMBIA, *sct:*

The grand jurors for the United States of America, inquiring for the District of Columbia, under their oath present, that on the first day of January, in the year of our Lord nineteen hundred and one, and from thence until the first day of April, in the year of our Lord nineteen hundred and three, John A. Benson was engaged with Frederick A. Hyde, for their own profit, gain, use and benefit, at the city of San Francisco, in the State of California, in the business of unlawfully obtaining from the said United States the possession and use of and title to public lands thereof outside of forest reserves established under the laws of the said United States, and unlawfully appropriating such public lands, in exchange for and in lieu of lands of the States of California and Oregon known as school lands, obtained by them, before and during the said period, from the said States in a manner, as it was charged, contrary to the laws of the said States respectively, that is to say, by a false and fraudulent practice of them the said John A. Benson and Frederick A. Hyde, whereby title to and possession of divers large tracts of such school lands (being lands lying within the limits of such forest reserves and open to purchase from those States by citizens thereof, respectively,

24 in quantities not exceeding, for each of such citizens, six hundred and forty acres in the said State of California and three hundred and twenty acres in the said State of Oregon, upon application being made to the proper authorities of the said States respectively, by any such citizen, supported by his affidavit, showing his qualifications to make such purchase, and, amongst other things, as before and during the said period was required by the laws of the said States, his intention to purchase such lands in good faith and for his own benefit, and that he had made no contract or agreement to sell the same), were knowingly obtained from the said States by the said John A. Benson and Frederick A. Hyde by their

causing to be made and filed with the said authorities applications for the purchase of the said school lands, and assignments of the same and of the certificates of purchase thereof, in the names of fictitious persons, and in the name of persons not really desiring, and not qualified, to purchase the same, (the use of which last mentioned names for such purposes the said John A. Benson and Frederick A. Hyde corruptly procured by the payment to such persons respectively of small sums of money, and also by falsely representing and causing to be represented to most of such persons that they were merely disposing of their respective rights to purchase such school lands,)—and by their causing such applications to be supported by forged and fraudulent affidavits and affidavits false, and known to the said John A. Benson and Frederick A. Hyde to be false, in this, that they purported to be, some the sworn affidavits of real persons, and others the sworn affidavits of the persons whose names were signed thereto, whereas in truth and in fact the former were the affidavits of fictitious persons and were not the affidavits of real persons or affidavits sworn to by any person, and the
25 latter were not the *bona fide* affidavits of the persons whose names were signed thereto, because such latter affidavits stated that the affiants therein were persons qualified under the laws of the said State of California, or of the said State of Oregon, as the case might be, to make such applications and to purchase such school lands, by reason, amongst other things, of their intending to purchase the same in good faith and for their own benefit respectively, and of their having made no contract or agreement to sell the same, whereas in truth and in fact none of such real persons intended to purchase such lands for his own use or benefit at all, but was either merely innocently acting upon the said false representations of the said John A. Benson and Frederick A. Hyde or knowingly aiding and assisting them in their said fraudulent practice, and whereas, also, some of the said latter affidavits were not the *bona fide* affidavits of the persons whose names were signed thereto respectively, because, though they purported to be sworn to by the persons whose names were signed thereto, they were never sworn to at all, in truth and in fact, by any of those persons.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period, to wit, on the ninth day of January, in the year of our Lord nineteen hundred and three, an investigation of the said alleged unlawful appropriation by the said John A. Benson and Frederick A. Hyde of the said public lands of the said United States was ordered by the Secretary of the Interior of the said United States, for the purpose of ascertaining the
26 facts pertaining to such alleged unlawful appropriation of the said public lands, with a view to the rejection and cancellation, by the proper officers of the Department of the Interior of the said United States and of the General Land Office of the said United States, of the selection of such public lands made by the said

John A. Benson and Frederick A. Hyde, or by their agents and attorneys in their behalf, or in behalf of their assignees and grantees, in pursuance of their said business, and also with a view to beginning proper legal proceedings for the cancellation of all patents to such public lands so obtained and appropriated by the said John A. Benson and Frederick A. Hyde, and to punishing all persons guilty, in connection with the obtaining and appropriating by the said John A. Benson and Frederick A. Hyde, of the possession and use of and title to the public lands of the said United States in the manner aforesaid, of violating the criminal laws of the said United States relating to the unlawful entry and appropriation of the public lands thereof; and that such investigation was immediately thereupon begun and carried on by one Arthur B. Pugh, then a special agent in the public land service of the said United States; and one Harry E. Steece, then a special agent of the said General Land Office, in pursuance of the aforesaid order of the said Secretary of the Interior and under instructions from the said Secretary of the Interior that a report of their doings and of all the facts ascertained by them in the premises be transmitted to the said Secretary of the Interior, which report, when so transmitted, would be for the exclusive consideration and use of the proper officers of the said Department of the Interior, and of the said General Land Office, including the said Secretary of the Interior,
27 the Commissioner of the said General Land Office and the chief of the special service division in the said General Land Office hereinafter mentioned, and would be the official and secret report of the said special agents, the contents whereof should not be revealed by such special agents or either of them to any unofficial person before or after its being transmitted to the said Secretary of the Interior as aforesaid, and would not be intended for the consideration or use of any person not a proper officer of the said Department of the Interior or of the said General Land Office as aforesaid, and particularly would not be intended for the inspection or use of the said John A. Benson or Frederick A. Hyde, or any person acting in their behalf, or in behalf of either of them,—it being true, as the grand jurors aforesaid, upon their oath aforesaid, charge the fact to be, that such report would be (as when thereafter made and transmitted to the said Secretary of the Interior it was) of such a character, by reason of its tending to establish the truth of the charge against the said John A. Benson and Frederick A. Hyde and the facts pertaining to the said unlawful appropriation of the said public lands by them, as that if the contents of the same were revealed to the said John A. Benson or the said Frederick A. Hyde, either directly or indirectly, the securing of evidence to support the said charge and to establish the facts pertaining to such unlawful appropriation of the said public lands by the said John A. Benson and Frederick A. Hyde would be rendered more difficult and expensive for and to the said United States, if not impossible, and the objects of the said investigation defeated.

28 And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period aforesaid, one Woodford D. Harlan was an officer of the said United States, and a person acting for and on behalf of the said United States in an official function, under and by authority of the Department of the Interior of the Government of the said United States, that is to say, chief of the special service division in the said General Land Office, at the city of Washington, in the said District of Columbia; that the said Woodford D. Harlan, during the said period, by reason of his being such officer and person acting for and on behalf of the said United States in an official function under and by the authority of the said department, under the laws and the regulations theretofore and then pursuant to law prescribed and promulgated by the Secretary of the Interior of the said United States for the government of the said department and the conduct of its officers and clerks, and then in force, was charged with certain duties, amongst others with the duty of protecting the public lands of the said United States from unlawful entry and appropriation, and supervising the work of special agents employed for such purpose, and preparing instructions to such special agents relating to their various duties, with considering, when received, the reports of such special agents pertaining to such cases of alleged violation of the laws of the said United States relating to the public lands as should be referred to them for investigation, with initiating and taking charge of proceedings looking to the cancellation of such entries and selections of the said public lands as should appear to be unlawful and fraudulent, and with preparing cases for reference to the Department of Justice of the said United
29 States when legal proceedings should become necessary in such cases, either for the cancellation of patents procured by fraudulent means, or to punish persons for violations of the criminal laws relating to the said public lands; and that during such period, and by reason of his being and acting as such officer and person, it became and was the duty of the said Woodford D. Harlan when discharging the duties with which he was so charged as aforesaid, (to the end that the interests of the said United States in the public lands outside of forest reserves might be protected and preserved and the title of the said United States thereto confirmed, and that all persons guilty of making fraudulent entries or appropriations of such public lands in violation of the laws of the said United States in that behalf might be prosecuted and punished under those laws), to preserve and keep for the exclusive consideration and use of the said proper officers of the said Department of the Interior and of the said General Land Office all information and official reports coming to him the said Woodford D. Harlan by virtue of his said office and in his said place of trust, concerning such unlawful entries and appropriations, and concerning all violations of the said laws and investigations thereof, and to not allow any such information or reports, or the contents of such reports, to be in

any manner given or revealed to or obtained by any persons charged with such violations or the making of such fraudulent entries or appropriations of such public lands.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said John A. Benson, afterwards and during the said period, to wit, on the fifteenth day of March, in the year of our Lord nineteen hundred and three, at Washing-
30 ton, aforesaid, in the said District of Columbia, well knowing all and singular the premises, unlawfully did give certain money, to wit, the sum of two hundred dollars, in money of kinds and denominations to the said grand jurors unknown, to him the said Woodford D. Harlan (he the said Woodford D. Harlan then and there still being an officer of the said United States, and a person acting for and on behalf of the said United States in an official function, under and by authority of the said Department of the Interior as aforesaid), with intent then and there on the part of him the said John A. Benson to induce the said Woodford D. Harlan to do an act in violation of his lawful duty, that is to say, to reveal to him the said John A. Benson, when the same should come to his hands and knowledge in his official capacity, the contents of the report of the said special agents pretaining to the investigation aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said John A. Benson, on the said fifteenth day of March, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, in manner and form aforesaid, unlawfully did give money to an officer of the said United States, and to a person then acting for and on behalf of the said United States in an official function, under and by authority of a department of the Government of the said United States, with intent then and there on the part of him the said John A. Benson to induce the said officer, and person to do an act in violation of his lawful duty; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

31 2. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said John A. Benson, on the twentieth day of March, in the same year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the first count of this indictment, well knowing all and singular the premises set forth in that count, unlawfully did give to the said Woodford D. Harlan, in the said first count mentioned, certain other money, to wit, the sum of two hundred dollars, in moneys of the said United States of kinds and descriptions to the said grand jurors unknown, with intent then and there on the part of him the said John A. Benson to induce the said Woodford D. Harlan to do an act in violation of his lawful duty, that is to say, to reveal to him the said John A. Benson, when the same should come to the hands and knowledge of him the said Woodford D. Harlan in his official capacity, the con-

tents of the report mentioned in the said first count of the said Arthur B. Pugh and Harry E. Steece, special agents as in the said first count aforesaid; he the said Woodford D. Harlan then and there, to wit, at the time and place when and where the said John A. Benson so gave him the last-mentioned money, being an officer of the said United States and a person acting for and on behalf of the said United States in an official function, under and by authority of the Department of the Interior of the said United States, as in the said first count set forth; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

32 3. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said John A. Benson, on the twenty-fifth day of March, in the same year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the first count of this indictment, well knowing all and singular the premises set forth in that count, unlawfully did give to the said Woodford D. Harlan in the said first count mentioned, certain other money, to wit, the sum of one hundred dollars, in moneys of the said United States of kinds and descriptions to the said grand jurors unknown, with intent then and there on the part of him the said John A. Benson to induce the said Woodford D. Harlan to do an act in violation of his lawful duty, that is to say, to reveal to him the said John A. Benson, when the same should come to the hands and knowledge of him the said Woodford D. Harlan in his official capacity the contents of the report, mentioned in the said first count of the said Arthur B. Pugh and Harry E. Steece, special agents as in the said first count aforesaid; he the said Woodford D. Harlan then and there, to wit, at the time and place when and where the said John A. Benson so gave him the last-mentioned money, being an officer of the said United States, and a person acting for and on behalf of the said United States in an official function, under and by authority of the Department of the Interior of the said United States, as in the said first count set forth; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

4. And the grand jurors aforesaid, upon their oath afore-
33 said, do further present, that on the said first day of January, in the year of our Lord nineteen hundred and one, and from thence hitherto, the said John A. Benson was and has been engaged, with the said Frederick A. Hyde, for their own profit, gain, use and benefit, at the city of San Francisco, in the State of California, as in the first count of this indictment set forth, in the business of unlawfully obtaining from the said United States the possession and use of and title to public lands of the said United States outside of forest reserves established under the laws of the said United States, and lawfully appropriating such public lands, in exchange for and in lieu of lands of the States of California and Oregon known as

school lands, obtained by them, before and during the last-mentioned period, from the said States in a manner, as it was charged, contrary to the laws of the said States respectively, that is to say, by a false and fraudulent practice of them the said John A. Benson and Frederick A. Hyde whereby title to and possession of divers large tracts of such school lands, (being lands lying within the limits of such forest reserves and open to purchase from those States by citizens thereof respectively, under the laws thereof respectively, in quantities not exceeding, for each of such citizens, six hundred and forty acres in the said State of California and three hundred and twenty acres in the said State of Oregon, upon application being made to the proper authorities of the said States respectively, by any such citizen, supported by his affidavit, showing his qualifications to make such purchase, and, amongst other things, as before and during the period in this count mentioned was required by the laws of the said States, his intention to purchase
34 such lands in good faith and for his own benefit, and that he had made no contract or agreement to sell the same,) were knowingly obtained from the said States by the said John A. Benson and Frederick A. Hyde by their causing to be made and filed with the said authorities applications for the purchase of the said school lands, and assignments of the same and of the certificates of purchase thereof, in the names of fictitious persons, and in the names of persons not really desiring, and not qualified, to purchase the same, (the use of which last mentioned names for such purposes the said John A. Benson and Frederick A. Hyde corruptly procured by the payment to such persons respectively of small sums of money, and also by falsely representing and causing to be represented to most of such persons that they were merely disposing of their respective rights to purchase such school lands,)—and by their causing such applications to be supported by forged and fraudulent affidavits and affidavits false, and known to said John A. Benson and Frederick A. Hyde to be false, in this, that they purported to be, some the sworn affidavits of real persons, and others the sworn affidavits of the persons whose names were signed thereto, whereas in truth and in fact the former were the affidavits of fictitious persons and were not the affidavits of real persons or affidavits sworn to by any person, and the latter were not the *bona fide* affidavits of the persons whose names were signed thereto, because such latter affidavits stated that the affiants therein were persons qualified under the laws of the said State of California, or of the said State of Oregon, as the case might be, to make
35 such applications and to purchase such school lands, by reason, amongst other things, of their intending to purchase the same in good faith and for their own benefit respectively, and of their having made no contract or agreement to sell the same, whereas in truth and in fact none of such real persons intended to purchase such lands for his own use or benefit at all, but was either merely innocently acting upon the said false representations of the said John A. Benson and Frederick A. Hyde, or knowingly aiding and

assisting them in their said fraudulent practice, and whereas, also, some of the said latter affidavits were not the *bona fide* affidavits of the persons whose names were signed thereto respectively, because, though they purported to be sworn to by the persons whose names were signed thereto, they never were sworn to at all, in truth and in fact, by any of those persons.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period in this count mentioned, *to wit*, on the ninth day of January, in the year of our Lord nineteen hundred and three, an investigation of the said alleged unlawful appropriation by the said John A. Benson and Frederick A. Hyde of the said public lands of the said United States was ordered by the Secretary of the Interior of the said United States, as in the said first count set forth, for the purpose of ascertaining the facts pertaining to such alleged unlawful appropriation of the said public lands, with a view to the rejection and cancellation, by the proper officers, of the Department of the Interior of the said United States and of the General Land Office of the said United States, of the selections of such public lands made by the said John A. Benson and Frederick A. Hyde
36 or by their agents and attorneys in their behalf, or in behalf of their assignees and grantees, in pursuance of their said business, and also with a view to beginning proper legal proceedings for the cancellation of all patents to such public lands so obtained and appropriated by the said John A. Benson and Frederick A. Hyde, and to punishing all persons guilty, in connection with the obtaining and appropriating by the said John A. Benson and Frederick A. Hyde of the possession and use of and title to the public lands of the said United States in the manner aforesaid, of violating the criminal laws of the said United States relating to the unlawful entry and appropriation of the public lands thereof; and that such investigation was immediately thereupon begun and carried on by one Arthur B. Pugh, then a special agent in the public land service of the said United States, and one Harry E. Steece, then a special agent of the said General Land Office, in pursuance of the aforesaid order of the said Secretary of the Interior and under instructions from the said Secretary of the Interior that a report of their doings and of all the facts ascertained by them in the premises be transmitted to the said Secretary of the Interior, which report, when so transmitted, would be for the exclusive consideration and use of the proper officers of the said Department of the Interior and of the said General Land Office, and would be the official and secret report of the said special agents, the contents whereof should not be revealed by such special agents or either of them to any unofficial person before or after its being transmitted to the said Secretary of the Interior as aforesaid, and would not be intended for the consideration or use of any person not a proper officer of the said Department of the Interior, or of the said General Land
37 Office as aforesaid, and particularly would not be intended for the inspection or use of the said John A. Benson or Fred-

erick A. Hyde, or any person acting in their behalf, or in behalf of either of them,—it being true, as the grand jurors aforesaid, upon their oath aforesaid, charge the fact to be, that such report would be (as when thereafter made and transmitted to the said Secretary of the Interior it was) of such a character, by reason of its tending to establish the truth of the said charge against the said John A. Benson and Frederick A. Hyde and the matters pertaining to the said unlawful appropriation of the said public lands by them, as that if the contents of the same were revealed to the said John A. Benson or the said Frederick A. Hyde, either directly or indirectly, the securing of evidence to support the said charge and to establish the facts pertaining to such unlawful appropriation of the said public lands by the said John A. Benson and Frederick A. Hyde would be rendered more difficult and expensive for and to the said United States, if not impossible, and the objects of the said investigation defeated.

And the grand jurors aforesaid, upon the oath aforesaid, do further present, that during the said period in this count of this indictment mentioned, one Woodford D. Harlan was an officer of the said United States, and a person acting for and on behalf of the said United States in an official function, under and by authority of the Department of the Interior of the Government of the said United States, that is to say, a clerk regularly employed in the said General Land Office, at the said city of Washington, in the said District of Columbia; that the said Woodford D. Harlan then and
38 there, by reason of his being such officer and person acting as last aforesaid, and of his being regularly employed in the said General Land Office, and so having access to the records of the said special service division of the said General Land Office, was in a position to ascertain and know the contents of any report which should be transmitted by the said special agents or either of them to, and intended for the exclusive use of, said officers of the said Department of the Interior and of the said General Land Office, as in this count set forth, concerning the investigation in this count mentioned of the said charge against the said John A. Benson and Frederick A. Hyde and pertaining to the said unlawful appropriation of the said public lands by them in this count referred to; and that, during the last mentioned period, by reason of his being such officer and person acting for and on behalf of the said United States as in this count aforesaid, it became and was the duty of the said Woodford D. Harlan to preserve and keep for the exclusive consideration and use of the said proper officers of the said Department of the Interior and of the said General Land Office all information which might come to his knowledge, or be ascertainable by him, by reason of his said office and employment, pertaining to such reports as might be so transmitted to the said proper officers by the said special agents or any of them in regard to the said investigation, without revealing the contents thereof or any portion of the same to any unofficial person, much less to the said John A. Benson and

Frederick A. Hyde, or either of them, or their agents or attorneys.

39 And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said John A. Benson, afterwards, and during the period in this count of this indictment mentioned, to wit, on the fifteenth day of March, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, well knowing all and singular the premises set forth in this count, unlawfully did give certain other money, to wit, the sum of two hundred dollars, in money of kinds and denominations to the said grand jurors unknown, to him the said Woodford D. Harlan (he the said Woodford D. Harlan then and there still being an officer of the said United States, and a person acting for and on behalf of the said United States in an official function, under and by authority of the said Department of the Interior as aforesaid), with intent then and there on the part of him the said John A. Benson to induce the said Woodford D. Harlan to do an act in violation of his lawful duty, that is to say, to reveal to him

40 the said John A. Benson when the same should come to his hands and knowledge in his official capacity, the contents of the report of the said special agents pertaining to the investigation aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said John A. Benson, on the said fifteenth day of March, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, in manner and form in this count aforesaid, unlawfully did give money to an officer of the said United States, and to a person then acting for and on behalf of the said United States in an official function, under and by authority of a department of the Government of the said United States, with intent then and there on the part of him the said John A. Benson to induce the said officer and person to do an act in violation of his lawful duty; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

5. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said John A. Benson, on the twentieth day of March, in the same year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the fourth count of this indictment, well knowing all and singular the premises set forth in that count unlawfully did give to the said Woodford D. Harlan in the said fourth count mentioned, certain other money, to wit, the sum of two hundred dollars, in moneys of the said United States of kinds and descriptions to the said grand jurors unknown, with intent then and there on the part of him the said John A. Benson to induce the said Woodford D. Harlan to do an act in violation of his lawful duty, that is to say, to reveal to him the said

41 John A. Benson when the same should come to the hands and knowledge of him the said Woodford D. Harlan in his

official capacity, the contents of the report, mentioned in the said fourth count, of the said Arthur B. Pugh and Harry E. Steece, special agents as in the said fourth count aforesaid; he the said Woodford D. Harlan, then and there, to-wit, at the time and place, when and where the said John A. Benson so gave to him the last-mentioned money, being an officer of the said United States, and a person acting for and on behalf of the said United States in an official function, under and by authority of the Department of the Interior of the said United States, as in the fourth count set forth: against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

6. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said John A. Benson, on the twenty-fifth day of March, in the same year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, under the circumstances and conditions set forth in the fourth count of the indictment, well knowing all and singular the premises set forth in that count, unlawfully did give to the said Woodford D. Harlan in the said fourth count mentioned, certain other money, to-wit, the sum of one hundred dollars, in moneys of the said United States of kinds and descriptions to the said grand jurors unknown, with intent then and there on the part of him the said John A. Benson, to induce the said Woodford D. Harlan to do an act in violation of his lawful duty, that is to say, to reveal to him the said John A. Benson, when the same should come to the hands and knowledge of him the said Woodford D. Harlan in his official capacity, the contents of
42 the report, mentioned in the said fourth count, of the said Arthur B. Pugh and Harry E. Steece, special agents as in the said fourth count aforesaid; he the said Woodford D. Harlan then and there, to wit, at the time when and where the said John A. Benson so gave to him the last-mentioned money being an officer of the said United States, and a person acting for and on behalf of the said United States in an official function, under and by authority of the Department of the Interior of the said United States, as in the said fourth count set forth; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

7. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the said first day of January, in the year of our Lord nineteen hundred and one, the said John A. Benson was, and from thence hitherto has been, engaged, with the said Frederick A. Hyde, for their own profit, gain, use and benefit, at the city of San Francisco, in the State of California, as in the first count of this indictment set forth, in the business of unlawfully obtaining from the said United States the possession and use of and title to public lands of the said United States outside of forest reserves established under the laws of the said United States, and unlawfully appropriating such public lands, in exchange for and in lieu of

lands of the States of California and Oregon known as school lands, obtained by them, before and during the last mentioned period, from the said States in a manner, as it was charged, contrary to the laws of the said States respectively, that is to say, by a false and fraudulent practice of them the said John A. Benson and
43 Frederick A. Hyde whereby title to and possession of divers large tracts of such school lands, (being lands lying within the limits of such forest reserves and open to purchase from those States by citizens thereof respectively, under the laws thereof respectively, in quantities not exceeding, for each of such citizens, six hundred and forty acres in the said State of California and three hundred and twenty acres in the said State of Oregon, upon application being made to the proper authorities of the said States respectively, by any such citizen, supported by his affidavit, showing his qualifications to make such purchase, and, amongst other things, as before and during the period in this count mentioned was required by the laws of the said States, his intention to purchase such lands in good faith and for his own benefit, and that he had made no contract or agreement to sell the same,) were knowingly obtained from the said States by the said John A. Benson and Frederick A. Hyde by their causing to be made and filed with the said authorities applications for the purchase of the said school lands, and assignments of the same and of the certificates of purchase thereof, in the names of fictitious persons, and in the names of persons not really desiring, and not qualified, to purchase the same, (the use of which last-mentioned names for such purposes the said John A. Benson and Frederick A. Hyde had corruptly procured by the payment to such persons respectively of small sums of money, and also by falsely representing and causing to be represented to most of such persons that they were merely disposing of their respective rights to purchase such school lands),—and by their causing such applications to be supported by forged and fraudulent affidavits and affidavits false, and known to the
44 said John A. Benson and Frederick A Hyde to be false, in this, that they purported to be, some the sworn affidavits of real persons, and others the sworn affidavits of the persons whose names were signed thereto, whereas in truth and in fact the former were the affidavits of fictitious persons and were not the affidavits of real persons or affidavits sworn to by any person, and the latter were not the *bona fide* affidavits of the persons whose names were signed thereto, because such latter affidavits stated that the affiants therein were persons qualified under the laws of the said State of California, or of the said State of Oregon, as the case might be, to make such applications and to purchase such school lands, by reason, amongst other things, of their intending to purchase the same in good faith and for their own benefit respectively, and of their having made no contract or agreement to sell the same whereas in truth and in fact none of such real persons intended to purchase such lands for his own

use or benefit at all, but was either merely innocently acting upon the said false representations of the said John A. Benson and Frederick A. Hyde, or knowingly aiding and assisting them in their said fraudulent practice, and whereas, also, some of the said latter affidavits were not the *bona fide* affidavits of the persons whose names were signed thereto respectively, because, though they purported to be sworn to by the persons whose names were signed thereto, they never were sworn to at all, in truth and in fact, by any of those persons.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period in this count mentioned, to wit, on the ninth day of January, in the year of our Lord nineteen hundred and three, an investigation of the said alleged un-
45 lawful appropriation by the said John A. Benson and Frederick A. Hyde of the said public lands of the said United States was ordered by the Secretary of the Interior of the said United States, as in the said first count set forth, for the purpose of ascertaining the facts pertaining to such alleged unlawful appropriation of the said public lands, with a view to the rejection and cancellation, by the proper officers of the Department of the Interior, of the said United States and of the General Land Office of the said United States, of the selection of said public lands made by the said John A. Benson and Frederick A. Hyde, or by their agents and attorneys in their behalf, or in behalf of their assignees and grantees, in pursuance of their said business, and also with a view to beginning proper legal proceedings for the cancellation of all patents to such public lands so obtained and appropriated by the said John A. Benson and Frederick A. Hyde, and to punishing all persons guilty in connection with the obtaining and appropriating by the said John A. Benson and Frederick A. Hyde of the possession and use of and title to the public lands of the said United States in the manner aforesaid, of violating the criminal laws of the said United States relating to the unlawful entry and appropriation of the public lands thereof; and that such investigation was immediately thereupon begun and carried on by one Arthur B. Pugh, then a special agent in the public land service of the said United States, one Harry E. Steece, then a special agent of the said General Land Office, and William J. Burns, then a special agent of the said General Land Office, in pursuance of the aforesaid order of the said Secretary of the Interior and under instructions
46 from the said Secretary of the Interior that reports of their doings respectively, and of all the facts ascertained by them in the premises, be transmitted to the said Secretary of the Interior, which reports, when so transmitted would be for the exclusive consideration and use of the proper officers of the said Department of the Interior and of the said General Land Office, and would be the official and secret reports of the said special agents, the contents whereof should not be revealed by such special agents or either of them to any unofficial person before or after their being

transmitted to the said Secretary of the Interior as aforesaid, and would not be intended for the consideration or use of any person not a proper officer of the said Department of the Interior or of the said General Land Office as aforesaid, and particularly would not be intended for the inspection or use of the said John A. Benson or Frederick A. Hyde, or any person acting in their behalf, or in behalf of either of them,—it being true, as the grand jurors aforesaid, upon their oath aforesaid, charge the fact to be, that such reports would be (as when thereafter made and transmitted to the said Secretary of the Interior they were) of such a character, by reason of their tending to establish the truth of the charge against the said John A. Benson and Frederick A. Hyde and the matters pertaining to the said unlawful appropriation of the said public lands by them, as that if the contents of the same were revealed to the said John A. Benson or the said Frederick A. Hyde, either directly or indirectly, the securing of evidence to support the said charge and to establish the facts pertaining to such unlawful appropriation of the said public lands by the said John A. Benson and Frederick A.
47 Hyde would be rendered more difficult and expensive for and to the said United States, if not impossible, and the objects of the said investigation defeated.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period in this count of this indictment mentioned, one Woodford D. Harlan was an officer of the said United States, and a person acting for and on behalf of the said United States in an official function, under and by authority of the Department of the Interior of the Government of the said United States, that is to say, a clerk regularly employed in the said General Land Office, at the said city of Washington, in the said District of Columbia; that the said Woodford D. Harlan then and there, by reason of his being such officer and person acting as last aforesaid, and of his being regularly employed in the said General Land Office, and so having access to the records of the said General Land Office, was in a position to ascertain and know the contents of any report which should be transmitted by the said special agents to, and intended for the exclusive use of, the said proper officers of the said Department of the Interior and of the said General Land Office, concerning the investigation in this count mentioned of the said charge against the said John A. Benson and Frederick A. Hyde and pertaining to the said unlawful appropriation of the said public lands by them in this count referred to; and that, during the last mentioned period, by reason of his being such officer and person acting for and on behalf of the said United States as in this count aforesaid, it became and was the duty of the said Woodford D. Harlan to preserve and keep for the exclusive consideration and use of the said
48 proper officers of the said Department of the Interior and of the said General Land Office all information which might come to his knowledge, or be ascertainable by him, by reason of his said office and employment, pertaining to such reports as

might be so transmitted to the said proper officers by the said special agents or any of them in regard to the said investigation, without revealing the contents thereof or any portion of the same to any unofficial person, much less to the said John A. Benson and Frederick A. Hyde, or either of them, or their agents or attorneys.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said John A. Benson, afterwards, and during the period in this count of this indictment mentioned, to wit, on the eighteenth day of December, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, well knowing all and singular the premises set forth in this count, unlawfully did give certain other moneys, to wit, four gold certificates of the said United States, of the denomination and value of fifty dollars each, to him the said Woodford D. Harlan (he the said Woodford D. Harlan then and there still being an officer of the said United States, and a person acting for and on behalf of the said United States in an official function, under and by authority of the said Department of the Interior as aforesaid), with intent then and there on the part of him the said John A. Benson to induce the said Woodford D. Harlan to do an act in violation of his lawful duty, that is to say, to reveal to him the said John A. Benson when the same should come to his hands and knowledge in his official capacity, the contents of the reports of the said special agents pertaining to the investigation aforesaid.

49 And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said John A. Benson, on the said eighteenth day of December, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, in manner and form in this count aforesaid, unlawfully did give money to an officer of the said United States, and to a person then acting for and on behalf of the said United States in an official function, under and by authority of a department of the Government of the said United States, with intent then and there on the part of him the said John A. Benson to induce the said officer and person to do an act in violation of his lawful duty; against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

8. And the grand jurors aforesaid, upon their oath aforesaid, do further present, that on the said first day of January, in the year of our Lord nineteen hundred and one, the said John A. Benson was, and from thence hitherto has been, engaged, with the said Frederick A. Hyde, for their own profit, gain, use and benefit, at the city of San Francisco, in the State of California, as in the first count of this indictment set forth, in the business of unlawfully obtaining from the said United States the possession and use of and title to public lands of the said United States outside of forest reserves established under the laws of the said United States, and unlawfully appropriating such public lands, in exchange for and in lieu of lands of the States of California and Oregon known as school lands, ob-

tained by them, before and during the last mentioned period
50 from the said States in a manner, as it was charged contrary to the laws of the said States respectively, that is to say, by a false and fraudulent practice of them the said John A. Benson and Frederick A. Hyde whereby title to and possession of divers large tracts of such school lands, (being lands lying within the limits of such forest reserves and open to purchase from those States by citizens thereof respectively, under the laws thereof respectively, in quantities not exceeding, for each of such citizens, six hundred and forty acres in the said State of California and three hundred and twenty acres in the said State of Oregon, upon application being made to the proper authorities of the said States respectively, by any such citizen, supported by his affidavit, showing his qualifications to make such purchase, and, amongst other things, as before and during the period in this count mentioned was required by the laws of the said States, his intention to purchase such lands in good faith and for his own benefit, and that he had made no contract or agreement to sell the same), were knowingly obtained from the said States by the said John A. Benson and Frederick A. Hyde by their causing to be made and filed with the said authorities applications for the purchase of the said school lands, and assignments of the same and of the certificates of purchase thereof, in the names of fictitious persons, and in the names of persons not really desiring, and not qualified, to purchase the same, (the use of which last-mentioned names for such purposes the said John A. Benson and Frederick A. Hyde had corruptly procured by the payment to such persons respectively of small sums of money, and also by falsely repre-
senting and causing to be represented to most of such persons
51 that they were merely disposing of their respective rights to purchase such school lands),—and by their causing such applications to be supported by forged and fraudulent affidavits and affidavits false, and known to the said John A. Benson and Frederick A. Hyde to be false, in this, that they purported to be, some the sworn affidavits of real persons, and others the sworn affidavits of the persons whose names were signed thereto, whereas in truth and in fact the former were the affidavits of fictitious persons and were not the affidavits of real persons or affidavits sworn to by any person, and the latter were not the *bona fide* affidavits of the persons whose names were signed thereto, because such latter affidavits stated that the affiants therein were persons qualified under the laws of the said State of California, or of the said State of Oregon, as the case might be, to make such applications and to purchase such school lands, by reason, amongst other things, of their intending to purchase the same in good faith and for their own benefit respectively, and of their having made no contract or agreement to sell the same, whereas in truth and in fact none of such real persons intended to purchase such lands for his own use or benefit at all, but was either merely innocently acting upon the said false representations of the said John A. Benson and Frederick A. Hyde, or knowingly aiding

and assisting them in their said fraudulent practice, and whereas, also, some of the said latter affidavits were not the *bona fide* affidavits of the persons whose names were signed thereto respectively, because, though they purported to be sworn to by the persons whose names were signed thereto, they never were sworn to at all, in truth and in fact, by any of those persons.

52 And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the period in this count mentioned, to wit, on the ninth day of January in the year of our Lord nineteen hundred and three, an investigation of the said alleged unlawful appropriation by the said John A. Benson and Frederick A. Hyde of the said public lands of the said United States was ordered by the Secretary of the Interior of the said United States, as in the said first count set forth, for the purpose of ascertaining the facts pertaining to such alleged unlawful appropriation of the said public lands, with a view to the rejection and cancellation, by the proper officers of the Department of the Interior of the said United States and of the General Land Office of the said United States, of the selections of such public lands made by the said John A. Benson and Frederick A. Hyde, or by their agents and attorneys in their behalf, or in behalf of their assignees and grantees in pursuance of their said business, and also with a view to beginning proper legal proceedings for the cancellation of all patents to such public lands so obtained and appropriated by the said John A. Benson and Frederick A. Hyde, and to punishing all persons guilty, in connection with the obtaining and appropriating by the said John A. Benson and Frederick A. Hyde of the possession and use of and title to the public lands of the said United States in the manner aforesaid, of violating the criminal laws of the said United States relating to the unlawful entry and appropriation of the public lands thereof; and that such investigation was immediately thereupon begun and carried on by one Arthur B. Pugh, then a special agent in the public land service of the said United States, one Harry E.

53 Steece, then a special agent of the said General Land Office, and one William J. Burns, then a special agent of the said General Land Office, in pursuance of the aforesaid order of the said Secretary of the Interior and under instructions from the said Secretary of the Interior that reports of their doings respectively, and of all the facts ascertained by them in the premises, be transmitted to the said Secretary of the Interior,—which reports, when so transmitted, would be for the exclusive consideration and use of the proper officers of the said Department of the Interior and of the said General Land Office, and would be the official and secret reports of the said special agents, the contents whereof should not be revealed by such special agents or either of them to any unofficial person before or after their being transmitted to the said Secretary of the Interior as aforesaid, and would not be intended for the consideration or use of any person not a proper officer of the said Department of the Interior or of the said General Land Office

as aforesaid, and particularly would not be intended for the inspection or use of the said John A. Benson or Frederick A. Hyde, or any person acting in their behalf, or in behalf of either of them,—it being true, as the grand jurors aforesaid, upon their oath aforesaid, charge the fact to be, that such reports would be (as when thereafter, to wit, on the seventeenth day of November, in the year of our Lord nineteen hundred and three, made and transmitted to the said Secretary of the Interior they were) of such a character, by reason of their tending to establish the truth of the charge against the said John A. Benson and Frederick A. Hyde and the matters pertaining to the said unlawful appropriation of the said public lands by them, as that if the contents of the same were revealed to
54 the said John A. Benson or the said Frederick A. Hyde, either directly or indirectly, the securing of evidence to support the said charge and to establish the facts pertaining to such unlawful appropriation of the said public lands by the said John A. Benson and Frederick A. Hyde would be rendered more difficult and expensive for and to the said United States, if not impossible, and the objects of the said investigation defeated.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that during the said period in this count of this indictment mentioned, one William E. Valk was an officer of the said United States, and a person acting for and on behalf of the said United States in an official function, under and by authority of the Department of the Interior of the Government of the said United States, that is to say, a clerk regularly employed in the said General Land Office, at the said city of Washington, in the said District of Columbia; that the said William E. Valk then and there, by reason of his being such officer and person acting as last aforesaid, and of his being regularly employed in the said General Land Office, and so having access to the records of the said General Land Office, was in a position to ascertain and know the contents of any report which should be transmitted by the said special agents to, and intended for the exclusive use of, the said proper officers of the said Department of the Interior and of the said General Land Office, concerning the investigation in this count mentioned of the said charge against the said John A. Benson and Frederick A. Hyde and pertaining to the said unlawful appropriation of the said public lands by them in this count referred to; and that during the last mentioned period,
55 by reason of his being such officer and person acting for and on behalf of the said United States as in this count aforesaid, it became and was the duty of the said William E. Valk to preserve and keep for the exclusive consideration and use of the said proper officers of the said Department of the Interior and of the said General Land Office all information which might come to his knowledge, or be ascertainable by him, by reason of his said office and employment, pertaining to such reports as might be so transmitted to the said proper officers by the said special agents or any of them in regard to the said investigation, without revealing the contents

thereof or any portion of the same to any unofficial person, much less to the said John A. Benson and Frederick A. Hyde, or either of them or their agents or attorneys.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said John A. Benson, afterwards, and during the period in this count of this indictment mentioned, to wit, on the sixteenth day of December, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, well knowing all and singular the premises in this count set forth, unlawfully did give certain money, to wit, the sum of one hundred dollars in lawful money of the said United States, to wit, four twenty-dollar gold certificates, one ten-dollar silver certificate, and one ten-dollar United States note, to him the said William E. Valk (he the said William E. Valk then and there still being an officer of the said United States, and a person acting for and on behalf of the said United States, in an official function, under and by authority of the said Department of the Interior as afore-
56 said), with intent then and there on the part of him the said John A. Benson to induce the said William E. Valk to do an act in violation of his lawful duty, that is to say to reveal to him the said John A. Benson, when the same should come to his hands and knowledge in his official capacity, the contents of the reports of he said special agents pertaining to the investigation aforesaid.

And so the grand jurors aforesaid, upon their oath aforesaid, do say, that the said John A. Benson, on the said sixteenth day of December, in the year of our Lord nineteen hundred and three, at Washington aforesaid, in the said District of Columbia, in manner and form in this count aforesaid, unlawfully did give money to an officer of the said United States, and to a person then acting for and on behalf of the said United States in an official function, under and by authority of a department of the Government of the said United States, with intent then and there on the part of him the said John A. Benson to induce the said officer and person to do an act in violation of his lawful duty, against the peace and dignity of the said United States, and contrary to the form of the statute of the same in such case made and provided.

MORGAN H. BEACH,
United States Attorney.

57 Endorsed: No. 24,082. United States *vs.* John A. Benson. Violation of section 5451 R. S. U. S. Witnesses: William J. Burns, John E. Wilkie, James T. Macey, Woodford D. Harlan, William E. Valk, Walter K. Slack, Charles Johnson, Marion L. Doyle. A true bill: Samuel H. Walker, foreman. Filed Dec. 31, 1903.

58 The President of the United States of America to the marshal of the United States for the southern district of New York, and to his deputies, or any or either of them:

Whereas, complaint on oath hath been made to me, charging that John A. Benson, did on or about the 15th day of March in the year one thousand nine hundred and three, at Washington in the District of Columbia unlawfully give money to an officer of the United States, to wit, to one Woodford D. Harlan a person then acting for and on behalf of the United States in an official function, under and by authority of a department of the Government of the United States, to wit, the Department of the Interior, with the intent on the part of the said John A. Benson to induce the said Woodford D. Harlan, the said officer and person to do an act in violation of his lawful duty, as will more fully and at large appear by a reference to the indictment, containing eight counts, a certified copy of which is attached to and made a part of the complaint; against the peace of the United States and their dignity, and against the form of the statute of the United States in such case made and provided.

And it having been satisfactorily proven to me that the said John A. Benson is now within the southern district of New York,

Now, therefore, you are hereby commanded, in the name of the President of the United States of America, to apprehend the said John A. Benson and bring his body forthwith before me, or some judge or justice of the United States, wherever in the State of
59 New York he may be found, that he may then and there be dealt with according to law for the said offense.

Given under my hand and seal, this 31st day of December, in the year of our Lord, one thousand nine hundred and three.

JOHN A. SHIELDS,
[SEAL.] United States Commissioner for the Southern District of New York.

HENRY L. BURNETT,
United States Attorney.

(Endorsed:) R. S. 5451—U. S. circuit court.—The United States of America *vs.* John A. Benson.—Warrant to apprehend.—Henry L. Burnett, United States attorney.

The within writ was received Dec. 31, 1903, and the same was executed by arresting the within named John A. Benson on Dec. 31st, 1903 and I now produce his body before Comm'r Shields, as therein commanded.

WM. HENKEL,
U. S. Marshal for the S. Dist. of N. Y.

Dec. 31, '03.

60 The within named accused John A. Benson, being arrested and brought before me on the within warrant and the charge

herein contained being duly explained to said accused and he being duly cautioned and informed of his rights in the matter says that he demands an examination and the said accused John A. Benson is hereby committed to the custody of the U. S. marshal for the southern district of New York to be brought before me for examination the 11th day of January 1904 at 2 o'clock p. m. in default of $10,000. bail.

New York, Dec. 31, 1903.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

To William Henkel, Esq., U. S. marshal.

Attendance and examination adjourned to January 12th 1904, at 10:30 o'clock a. m.

January 11th, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

Attendance and further examination adjourned to January 13, 1904 at 10:30 o'clock a. m.

Jannary 12th, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

61 Attendance and examination adjourned to Februar 2, 1904 at 10:30 o'clock a. m.

January 13th, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

Attendance and examination adjourned to February 10, 10½ a. m.

Feb'y 2, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

Attendance and examination adjourned to February 17, 10½ a. m.

Feb'y 10, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

Attendance and examination adjourned to February 27, 1904 at 10:30 o'clock a. m.

Feb'y 26, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

62 Attendance and examination adjourned to February 23rd 1904 at 10:30 o'clock a. m.

February 17, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

Attendance and examination adjourned to February 24th, 1904 at 10:30 o'clock a. m.
February 23, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

Attendance and examination adjourned to February 26, 1904 at 1 o'clock p. m.
February 24, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

Attendance and examination adjourned to await decision of commissioner on motion to dismiss.
February 27, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

Attendance and examination adjourned to May 4th 1904 at 10:30 o'clock a. m.
May 3, 1904.

JOHN A. SHIELDS,
U. S. Commissioner.

63 The accused John A. Benson, named in the annexed warrant having been arrested and brought before me on said warrant and the charge in the warrant named having been duly explained to said accused, and he demanding an examination on the charge, and said examination having been proceeded with and it appearing to me from the testimony offered that there is probable cause to believe the said John A. Benson guilty of the charge in the annexed warrant contained, he is hereby committed for trial at the District of Columbia, being the District in which the offense charged is alleged to have been committed. And the said John A. Benson is hereby committed to the custody of the United States marshal for the southern district of New York until a warrant for his removal shall issue by the U. S. district judge or he shall be otherwise dealt with according to law.
New York, May 4, 1904.

JOHN A. SHIELDS,
[SEAL.] United States Commissioner, S. D. of N. Y.

To William Henkel, Esq., U. S. marshal.

64 United States Circuit Court, Southern District of New York.

THE UNITED STATES vs. JOHN A. BENSON. } Before John A. Shields, Esq., U. S. Commissioner.

NEW YORK, January 11, 1904.

Appearances.

Mr. E. E. Baldwin, ass't United States attorney, for the Government,
Mr. J. C. Campbell and Mr. Frank H. Platt, for the defendant.

Mr. PLATT: Before going further, your honor, we have an application to make for an adjournment to enable us to get testimony from San Francisco, the home of the defendant.

The defendant has been arrested upon a complaint of one of the Government's secret service officers, charging the defendant on information and belief, with the crime of bribery, under section 5451 of the Revised Statutes of the United States, and giving as the grounds of his information and belief an indictment which is alleged to have been found by the grand jury in the city of
65 Washington. Upon that complaint your honor issued the warrant, and the defendant was arrested here, the crime being alleged to have been committed in Washington. He was arrested here on the 31st day of December, on the afternoon of the last day of the last year, and it was set down for hearing before your honor here this morning.

Now, we had assumed until a short time ago, in fact, until we came here this morning, that the usual practice would be followed where a warrant of removal under section 1014 is sought, and where that is the object of the proceeding before the commissioner.

The COMMISSIONER: If your point is that you want a chance to put in a defense, you are entitled to it.

Mr. PLATT: We do intend to put in a defense. I am right at the point now. We intend to put in a defense here before you, and it is to get ready for that defense that we wish the adjournment. Now, under the indictment and the charge contained in the complaint, we cannot go on with the defense without documentary and other testimony from San Francisco, where the business as to which this offense relates, is carried on. As I say, when we came here we supposed the indictment would be put in evidence and that the usual course would be taken. Now I learn from the district attorney, after having seen witnesses here whose names appear on the
66 back of the indictment, that he intends to go on and examine witnesses, some from California and some from Washington.

Now, as to all of these witnesses, there will be a large amount of testimony by the defendants, and as to them all we cannot cross-examine them without our documents. There are documents which, as I understand it, exist, which will absolutely disprove this offense and meet any testimony that can possibly be given by the witnesses Harlan and Volk who are here now. We cannot cross-examine the witnesses or proceed with the case without the documents. I cannot see any advantage in going on this morning to any extent at all, because we must have these papers in order properly to present our case. There is no reason for undue haste, that I know of, and we have had no opportunity since the 31st day of December — there have been proceedings going on in Washington and here by which counsel has been pushed back and forth, and it has been impossible to give attention to anything except those proceedings, and we had no idea when we came here that it was proposed to put these witnesses on the stand for examination this morning. All we need is time to get our papers. The defendant is under ample bail.

The COMMISSIONER: I think we ought to go on with some
67 of the business we have here. If you determine hereafter you have to bring the witnesses back, they can be brought back.

Mr. PLATT: We know now we want them for cross-examination on documents we have got, and we shall want them ordered here for cross-examination. We cannot go on with the examination without our papers. The defendant is not arrested at his home where his business is. Looking at the papers you will see that the papers are voluminous, and these papers are three thousand miles from here. It is not like a case where a defendant is arrested at his home and where the papers relating to the matter are. There is no reason why this defendant, because of his arrest here, should be put to that disadvantage. There is not a possibility of proceeding with these witnesses who have been brought here from California, and we cannot proceed with the cross-examination of these witnesses without the documents these men have had to do with. We cannot proceed with these Washington witnesses without certain documents bearing on the subject, are here. The defense depends on those papers.

Mr. BALDWIN: In answer to that I simply want to say that the offense charged is bribery. The testimony of the witnesses from California, or if the defense is to — made by witnesses from
68 California, is a mere incident to this offense. There are certain alleged irregularities concerning which this defendant with others, as is charged, has been getting public lands in an irregular manner. An investigation is started by the Interior Department. Now, whether that investigation is one way or another, is immaterial. Whether they obtained anything derogatory or not to this defendant, or any other person mentioned, is immaterial. The fact is there was an investigation and that the investigating officers made their report that certain officials of the Government, charged with certain duties and obligations, were bribed by this

man, as alleged, to make known to him the contents or purport of this investigation. Now, if he has any testimony with reference to the main issue in this case, we can go on with our witnesses and they are not precluded from putting in their defense. We have a number of witnesses here. It is unfortunate for Mr. Platt that he was not in this case at the beginning, but his counsel knew what the charges were to be made here, and the Government must insist upon going on.

Mr. PLATT: Mr. Baldwin does not intend for a moment to say that he will put witnesses on the stand and preclude us from having a reasonable opportunity to examine them?

Mr. BALDWIN: No.

69 Mr. PLATT: I say we cannot cross-examine these witnesses without these papers, which relate directly to this issue even that Mr. Baldwin has spoken of.

The COMMISSIONER: We will go on as far as we can.

Mr. BALDWIN: I offer in evidence a certified copy of an indictment found by the grand jury of the District of Columbia on the 30th of December, 1903, together with the bench warrant issued under the seal of the supreme court of the District of Columbia.

I suppose there is no question about the indentity of the defendant?

Mr. PLATT: No, there is no question about that. We object, however, to the admission of the papers that have been offered, and each of them, on the ground that the indictment is insufficient and does not charge a crime under the United States statutes.

Objection overruled with leave to renew it hereafter.

Marked Exhibits 1 and 2.

Mr. BALDWIN: Upon the record, it is admitted that the gentlemen here, John A. Benson, is the person charged in the indictment.

Mr. PLATT: Yes; there is no question about that.

70 Mr. BALDWIN: Now I offer in evidence that part of the Legal Code of California contained in sections 3494, 3495, 3496, 3497, 3498, 3499, and 3500.

Mr. PLATT: We object to the admission in evidence of these statutes of California on the ground that they are irrelevant and incompetent.

Objection overruled. Exception.

Mr. BALDWIN: I offer in evidence sections of the General Laws of Oregon, 3618 down to and including 3628.

Same objection, ruling and exception.

Mr. BALDWIN: Now I ask the commissioner to judicially notice the act of Congress of June 14, 1897 / 30th Statutes at Large, pages 34 and 36. Also section 24 of the act of March 3, 1891, 26th Statutes at Large, page 1095. Also act of Congress, June 6th, 1900, 31st Statutes at Large, page 614, and the re-enactments thereof, 31st Statutes at Large, page 1037.

71 JAMES T. MACEY, being duly sworn on behalf of the Government, testified as follows:

Examined by Mr. BALDWIN:

Q. Where do you reside?
A. In Washington.
Q. What is your business?
A. Chief clerk, General Land Office.
Q. How long have you held that place?
A. Since the 1st of April, 1903.
Q. Do you know Woodford D. Harlan?
A. I do.
—. What position did he occupy?

Objected to, that it must be proved by the record, and as incompetent.

Objection overruled. Exception.

A. Mr. Harlan was appointed chief of the special service division of the General Land Office on June 12th, 1897, which position he held up to April 1, 1903, at which time he was reduced to a clerkship in the same bureau.

Q. And he held that down to what time?
A. April 1, 1903.

Mr. PLATT: I move to strike out the statement that he was reduced, as a matter provable by the record. The witness' testimony is incompetent.

Motion denied. Exception.

(By the COMMISSIONER:)

72 Q. Do you know that fact that he was reduced?
A. I do.
Q. Personally?
A. Yes, sir.

(By Mr. BALDWIN:)

Q. What were your duties, Mr. Macey?

Mr. PLATT: Objected to. Such testimony ought not to go in evidence on this charge. It is incompetent and irrelevant. It should be proven by the record. The indictment itself states that the duty which Mr. Benson induced Harlan, by paying money to violate, was a duty prescribed by the regulations promulgated by the Secretary of the Interior. Now let us have what those are.

Objection overruled. Exception.

A. My duties as chief clerk of the General Land Office are to supervise the work of the entire bureau generally to see that the orders and directions of the Commissioner are carried out, to give instructions and directions as to the work through the different chiefs of division, and supervise the work of the office generally.

Q. Now, during the time between 1897 and April, 1903, who had charge of that part of the General Land Office business referring to the investigations made by special agents?

A. Between June, 1897?

Q. Yes.

A. Mr. Woodford D. Harlan.

Q. Whose duty was it to look after the protection of the
73 public lands of the United States from unlawful entry and appropriation?

Objected to as incompetent and improper; that it should be proven by the regulations themselves.

Question withdrawn.

Q. In the due course of business, was it a part of your duties and did you inquire into the functions of the various officials in the Land Office, Department of the Interior?

A. Yes, sir.

Q. And were you in the due course of business familiar with the duties carried on by the respective officers and clerks of the Land Office division?

A. I was.

Q. And especially of the special agents of the Land Office?

A. Yes, sir.

Q. Now, between 1897 and April, 1903, what duties did Woodford D. Harlan perform there in the due course of business?

Objected to as incompetent.

Objection overruled. Exception.

A. He was chief of the special service division of the General Land Office.

Q. In the due course of business, what things came to him for his personal supervision, if you know?

74 Objected to as incompetent and irrelevant.

Objection overruled. Exception taken.

Mr. PLATT: I ask the privilege of cross-examining the witness at this point as to whether these regulations that he refers to were oral or in writing and where they are.

The COMMISSIONER: You may ask him that on cross-examination. You can move to strike it out afterwards unless connected.

A. I know of my own knowledge that Harlan, as chief of the special service division, had supervision over the employees.

(By Mr. PLATT:)

Q. What things came to him?

A. He has charge of the special agents of the General Land Office, whose duty it is to investigate all kinds of fraud——

Mr. PLATT: *O* object to it.

(By the COMMISSIONER:)

Q. Tell us what he did?

Mr. PLATT: I move to strike out anything about the duties of these special agents.

Motion denied. Exception.

(By Mr. BALDWIN:)

Q. Go ahead.

A. (Continuing:) Whose duty it is to investigate fraud of any and every character against the public lands.

Q. Was it a part of their duty or not, or of his duty, to supervise investigations concerning the unlawful entry and
75 appropriation of public lands?

Mr. PLATT: I suggest that the witness do the testifying.

A. It was his duty to investigate any and all unlawful appropriations and any violation by any individuals of any of the public land laws of that character.

Q. What were his duties with reference to supervising the work of the special agents employed for that purpose?

A. He had charge of all their assignments to duty, received the reports, assigned the work to them to do, to investigate, and to received their reports when they came into the office, and had charge of those books.

Objected to as in direct contradiction of the allegation in the indictment and complaint.

The COMMISSIONER: It will be subject to a motion to strike it out hereafter.

Mr. CAMPBELL: I move to strike it out now.

The COMMISSIONER: Decision reserved and with leave to renew it.

(By Mr. BALDWIN:)

Q. What other duties did he have?

A. He also has to prepare decisions on these reports when they are received from special agents and take such action as the records would seem to justify.

76 Q. Whose duty was it, if anybody's, of initiating and taking charge of the proceedings looking to the cancellation of entries and selections of public lands where it appeared they had been obtained unlawfully or fraudulently?

A. Mr. Harlan at that time, the chief of the division.

(By the COMMISSIONER:)

Q. That was his sole duty?

A. That was one of his duties.

Mr. PLATT: I ask that there may be to that question the same

objection as made before and the same exception, on the subject of his duties. I object to the whole of the testimony.

The COMMISSIONER: Yes. I will decide hereafter w-ether this shall be stricken out or not.

Q. Whose duty was it, if anybody's, of pr-paring cases for reference to the Department of Justice.

A. Mr. Harlan's duty.

—. That is, cases where investigation was made and referred for legal action, criminal or civil?

A. Yes.

Q. Whose duty was it, if anybody's, to prepare cases and refer to the Department of Justice for the purpose of cancelling the patents of land obtained unlawfully or fraudulently?

A. That would be Mr. Harlan.

Q. Are you familiar with the duties of the special agents
77 of the land division?

A. I am.

Q. Under whose directions in the due course of business did the special agents work?

A. Under the direction of the chief of the special service division of our office.

Q. Who is that?

A. Mr. Harlan from June 12, 1897, to April 1, 1903.

Q. Do you know whether the investigations made by the various special agents of the Land Office were in the due couse of business secret investigations or not?

Objected to as a matter of office regulations not to be proven orally.

Objection overruled. Exception.

Also objected to, that the allegation in the complaint is that the Secretary of the Interior, upon a certain charge, ordered, himself, certain special investigations to be made, and counsel is asking about general investigations.

Objection overruled. Exception.

A. Those reports are considered secret and confidential by our office.

Mr. PLATT: I move to strike that out as improper.

(By the COMMISSIONER:)

Q. What is the fact?

A. They are.

78 Q. Certain reports are made and those reports are secret. Is that it?

A. Those reports are confidential.

(By Mr. BALDWIN:)

Q. The whole work of the special agents division is secret, isn't it, in the due course of business?

A. In the due course of business it is all secret.

Q. Now I show you the annual report of the Department of the Interior and call your attention to page 279.

A. Yes, sir.

Q. Look at that and state w-ether or not that is an official publication of the department, showing the duties of the division in part or in whole?

Objected to on the ground that it is a document which speaks for itself and witness cannot state what it is.

Objection overruled. Exception.

(By the COMMISSIONER:)

Q. Do you know anything about it?

A. I do.

Q. Now, do you know that?

A. I do.

The COMMISSIONER: I overrule the objection and give you an exception.

Mr. PLATT: The witness does not know any such thing. The paper itself does not show any such thing and the witness is mistaken on the face of the document itself.

79 The COMMISSIONER: I am going to let this in and give you an exception.

Mr. BALDWIN: I offer in evidence, beginning at page 279 of the book entitled "Annual Reports of the Department of the Interior, 1903," beginning at the letter "P" and ending with that paragraph as marked

Objected to. Objection overruled. Exception.

Mr. PLATT: It appears that Mr. Harlan was put out of his place on April 1, 1903, and this book assumes to describe duties as of September, 1903.

The COMMISSIONER: It is for the fiscal year ending June 30, 1903.

Mr. PLATT: Wouldn't it be well to offer the title page in evidence?

Mr. BALDWIN: I offer what I want. On cross-examination you can offer any more, if you desire.

Mr. PLATT: I make the objection and take the exception.

Marked Exhibit 3, and reads as follows:

"P.—Special Service Division.

This division is charged with the duty of protecting the public lands from unlawful entry of appropriation and from timber trespass. It supervises the work of a force of special agents who are employed for this purpose, prepares instructions to them relating to their various duties, and refers to them such cases of alleged

80 violation of the laws relating to the public lands and the timber thereon as seem to require investigation. It considers their report when received, initiates and takes charge of proceedings

lookings to the cancellation of such entries as appear to be fraudulent, and prepares cases for reference to the Department of Justice when legal proceedings are necessary, either for the cancellation of patents procured be fraudulent means, to recover damages for trespass, to compel the removal of unlawful inclosures, or to punish parties for violation of criminal laws relating to the public lands. It has general charge of all matters relating to public timber outside of the forest reserves.

During the past year an average of 58 specials agents were employed in this work under the supervision of a force of clerks in this division averaging 18 in number."

Q. When reports are received from special agents in due course of business, to whom do they go, regardless of by whom first received?

Objected to because the complaint alleges these particular reports were to be made directly to the Secretary of the Interior.

Objection overruled. Exception.

A. His reports go to the chief of the special service division.

Q. It makes no difference to whom they are first made or delivered, or by whom first received?

A. It makes no difference whatever about that.

Q. They are bound to go to him?

A. Yes, sir.

81 —. If the reports, in the due course — business, should be made to the Secretary of the Interior, would they, in due course of business, go to Harlan as chief of this division?

Objected to as leading.

A. In due course of business, they would go to Harlan as chief of division.

(By the COMMISSIONER:)

Q. Who would they go to first; to the Secretary of the Interior?

A. Generally, they would report right to the Commissioner of the General Land Office.

Q. To whom does it go first?

A. Generally go to the Commissioner of the General, Land Office, received there and referred directly to the special service division. An occasion might arise where they would go directly to the Secretary. If the Secretary so directed, that could be done.

(By Mr. BALDWIN:)

Q. Would it be compatible with the duty of any clerk of the Land Office, to disclose any knowledge he might obtain of any report made by any of these special agents?

Objected to. Question withdrawn.

Q. Are you familar with the duties of the various clerks of the land division?

A. I am.

Q. Would it be or not, contrary to the duty of any clerk in the Land Office to disclose any information that he might obtain from any report made by any special agent, or any officer, if you

82 know?

Objected to on the ground that any answer that might be given to this question would be a conclusion of the witness of what it is alleged the law is; that it is incompetent.

Objection overruled. Exception.

A. It would be contrary to his duty to divulge any such report or the contents of any such report.

Q. What were Harlan's duties and what was his position after April, 1903?

A. He was a clerk, class 4 in the contest division of the General Land Office. His duties were to examine the records in contest cases and prepare decisions for the signature of the Commissioner or Assistant Commissioner.

Mr. PLATT: There is another question as to what his duties were. It is understood that is taken subject to the same objection and exception.

The COMMISSIONER: That is true as to all this line of testimony.

Mr. CAMPBELL: That is to all testimony of this witness given as to the duties of any official?

The COMMISSIONER: Yes.

Mr. CAMPBELL: We desire it stipulated on the record it is taken under our objection and exception?

83 The COMMISSIONER: Yes; as to all this line of testimony.

Q. As such clerk, would Harlan have access to reports made by the special agents of the Land Office of the records of the secret service division?

A. Not in the regular order of business, but he might have access to such reports.

Q. In the regular order of business he would not have access?

A. No.

—. Were those reports kept in any place such as he could go to?

A. Yes, sir.

Q. Now, where were those papers kept?

A. In the special service division.

Q. Assuming that in some contested case that had been referred to the division of which he was a clerk, there was involved a matter which had been investigated by some of the special agents, or any of them would he not then have in due course of business an opportunity to inspect that report?

A. He would.

Q. Do you know William E. Valk?

A. I do.

Mr. PLATT: We request that the other witnesses be kept apart from the examination.

The commissioner directs all witnesses for both sides to retire to another room.

84 Q. What position did he occupy in the Interior Department?

Same objection, ruling and exception as before.

A. Mr. Valk is principal examiner of the contests at $2000 a year, General Land Office; formerly an $1800 clerk.

Q. Up until when?

A. Prior to March 28, 1902.

Q. In the due course of business, if any contested case in that division of the Land Office came up wherein was involved a report from the special agents with reference to irregularities or obtaining land illegally, would he have access to such report if it was made?

A. He would.

Q. As a matter of fact, Mr. Macey, wasn't it customary for the clerks in the various divisions to go into other divisions for the purpose of inspecting documents whenever it became necessary?

Objected to as incompetent.

The COMMISSIONER: He has already answered it, I understand.

Q. Now, Mr. Macey, did you know of an investigation ordered by the Secretary of the Interior of certain fraudulent entries and appropriations of public lands in California and Oregon?

A. I did.

85 Q. Are you familiar with the signature of the Secretary of the Interior?

A. I am.

Q. Look at that document and tell me, if you know, whose signature it bears?

A. Yes, sir, I do know that signature.

Q. Whose signature is it?

Objected to. Objection overruled.

Exception.

A. That is the signature of Mr. E. A. Hitchcock, Secretary of the Interior.

Paper offered in evidence.

Objected to as incompetent and irrelevant.

Objection overruled.

Marked Exhibit 4, reading as follows:

"DEPARTMENT OF THE INTERIOR,
WASHINGTON, January 9, 1903.

Mr. Arthur B. Pugh, Washington, D. C.

SIR: Herewith I hand you a commission appointing you a special agent in the public land service, under that provision of the act of June 28, 1902, (32 Stat., 419, 452), relating to the protection of the public lands from illegal and fraudulent entry or appropriation. Your compensation will be $10.00 per day while employed in this service, and you will be allowed a *per diem* of $3.00 per day in lieu of subsistence, together with your actual, necessary expenses for transportation, including necessary sleeping car fares.

You will take and subscribe the necessary oath of office, and at once enter upon the discharge of your duties.

The work to which you are specially assigned is that of
86 going to the Territory of Arizona and the States of California and Oregon, and elsewhere if necessary, to thoroughly investigate and report upon the illegal and fraudulent entry or appropriation of public lands suggested and charged in a certain letter enclosed herewith from James Finlayson to First Assistant Secretary Ryan of this department; in a certain letter enclosed herewith from S. J. Holsinger to the Commissioner of the General Land Office; in a certain letter enclosed herewith from C. H. Higbie to the Secretary of the Interior, and in a certain letter enclosed herewith from G. B. Hannahs to the Secretary of the Interior.

The subject matter of these letters is suggested and charged illegal and fraudulent public land transactions under the forest reserve legislation, and particularly affecting the Sierra, Lake Tahoe, Zacca Lake, Pine Mountain and San Jacinto forest reserves in the State of California; the Cascade forest reserve in the State of Oregon, and other proposed, contemplated or established forest reserves.

In the course of this work you are authorized to employ such clerical or stenographic assistance as may be necessary in taking testimony or preparing your report.

Mr. H. E. Steece, a special agent of the General Land Office, will be directed to assist and co-operate with you in this work. You are directed to meet him on or about the 13th inst. at Denver, Colorado, and to then proceed to Tucson, Arizona, to confer with Special Agent S. J. Holsinger, and then to further proceed as the necessities of the work may require.

Very respectfully,
(Signed) E. A. HITCHCOCK, Secretary."

Q. State w-ether or not there came to you, in your official capacity, information that charges had been made against John A. Benson and a man named Hyde concerning the method of their obtaining certain public lands in California and Oregon?

87 Objected to as incompetent and not the best evidence. Objection overruled. Exception.

A. Yes, sir.

Q. Would it or not be contrary to the duty of a clerk or employee of the contest division of the Land Department to disclose any information that he might have received concerning any investigation made by these special agents?

Objected to as a conclusion.

Objection sustained.

Q. Are you familiar with his duties?

A. I did not understand the name of the clerk you refer to.

Q. Mr. Valk?

A. I am familiar with his duties.

Q. (Last preceding question read.)

Objected to. Objection overruled. Exception.

A. It would.

Cross examination by Mr. PLATT:

Q. Mr. Macey, were you a witness before the grand jury in Washington which found the indictment against Mr. Benson, upon which this complaint is founded?

A. I was.

88 Q. I refer now to the proceeding in which the indictment was filed December 30, 1903, which we have been talking about here?

A. Yes, sir.

Q. There is no mistake between us as to the proceeding?

A. No.

Q. Were you examined before the grand jury in the grand jury room by counsel for the Government?

A. Yes.

Q. Who examined you as counsel for the Government?

A. I don't recall the gentleman's name.

Q. Don't you know the man?

A. I know him by sight.

Q. Do you know his official position?

Objected to. Objection overruled.

A. No, except that he is counsel for the Government.

Q. How do you know that?

Objected to as immaterial and incompetent.

(By the COMMISSIONER:)

Q. How do you know he is counsel for the Government?

A. I was called before the grand jury and he was there acting for the Government.

Q. Do you know Mr. Beach, the district attorney in Washington?

A. I do not know him by sight.

Q. Do you know whether it was Mr. Beach that examined you?

A. I don't know.

Q. Do you know William J. Burns?

A. I do.

Q. He was also a witness before the grand jury in Wash-
89 ington?

Objected to. Objection sustained.

Q. Do you know whether Mr. Burns was in the room when you were examined as a witness; in the grand jury room?

A. He was not.

Q. Do you know these two gentlemen who are sitting behind the district attorney?

A. I do.

Q. Did either of them examine you in the grand jury room?

A. They were not there.

Q. Neither one of them was in the grand jury room?

A. No, they were not.

Q. Can you produce any rule or regulation of the Secretary of the Interior or of the Interior Department prescribing the duties of Mr. Harlan as they existed, either prior to April 30th or after April 30th, 1903?

Objected to. Objection overruled.

A. The best statement of his duties is contained——

Q. No; answer my question, if there is a rule or regulation which has been prescribed and promulgated by the Secretary of the Interior, stating the duties and as to the conduct of Harlan?

A. I cannot produce you such a regulation.

Q. Do you know whether there is any such regulation?

A. I do not know that there is such a regulation.

Q. If there was such a rule or regulation in writing, you would know it wouldn't you?

A. I think I would.

Q. Are there written or printed regulations governing the conduct of the Land Office?

A. There are a great many printed rules and regulations, but those are principally construing laws and giving instructions as to the method of carrying out certain laws of Congress.

90 Q. Are those printed in book form?

A. They are prinyed in book form and circular form, both; that is, small circulars, and also in books, and sometimes comes simply in official letters of direction.

Q. I am now asking you to confine yourself to any rule and regulations that are prescribed and promulgated by the Secretary of the

Interior for the conduct of the Land Office. Is there any such book as that?

A. No.

Q. You testified in answer to Mr. Baldwin, that it was the duty of certain employees of the department to protect the public lands of the United States from unlawful entry and appropriation?

A. Yes, sir.

Q. And how do you know that?

A. I know it by virtue of my official position there and know the work that these people are employed upon.

Q. It is from the custom of the department as you found it there when you came, and as you have conducted it. Is that right?

A. Yes, of my own knowledge.

Q. What of your own knowledge? Do you know it in any way except that you found that method of doing business, and that custom there when you came there, and you continued it or developed it?

A. Well, I found that when I cam- there, of course, but we in the office know what the laws are, and what appropriations are made for, and what the duties of certain classes of employees are, and it is our duty to see that they carry them out.

Q. You did not find those duties prescribed, however, in any statutes, did you?

A. I think the duties of special agents are——

Q. I am speaking now of Harlan. Did you find any duty on the part of Harlan prescribed by statute?

A. No.

Q. You have stated what Harlan's duties were?

A. Yes, sir.

91 Q. In answer to Mr. Baldwin. Are any of those duties that you have described, prescribed in any statute of the United States?

A. Well, I think that some of those duties are prescribed by the appropriation act.

Q. Now will you be good enough to point out any appropriation act which specifies any of the duties on the part of Harlan, or on the part of Valk that you have testified to on your direct examination, or any other statute of the United States?

A. I think the words of the appropriation act, vol. 32 of the Statutes at Large, page 452. It would be the duty of the chief of the special service division to take charge of the agents appointed under that act, and the duties specified therein, but there is one portion referring to adjustment of claims for swamp lands, indemnity for swamp lands, a small item, that would not come under him, and the rest of it would.

Q. Read the provision of law which you claim prescribes some of these duties about which you have been testifying.

A. Depredations on public timber; protecting public lands; on settlement of claims for swamp lands and swamp land indemnity; to

meet the expenses of protecting timber on the public lands, or cutting thereof; of protecting public lands from illegal and fraudulent entry and appropriation and of adjusting claims for swamp land, in-emnity for swamp land, one hundred and fifty thousand dollars, provided that agents, and others employed under this appropriation, shall be selected by the Secretary of the Interior and allowed *per diem*, subject to such rules and regulations, and so forth. Agents appointed under that, come under the control of Mr. Harlan.

Q. Just confine yourself to answering my question. The abstract you have read is from chapter 1301 of the Laws of 1902, 32 Stat. at Large, page 452. Is that citation correct?

A. Chapter 1301, yes, sir.

92 Q. Do you know of any other statute which prescribes any duties of either Harlan or Valk which you have testified about on your direct examination in answer to Mr. Baldwin?

A. You will find this same statute repeated from year to year.

Q. That is to say, you mean there are similar provisions in the appropriation laws of each year to the one to which you have referred and which has been put in evidence?

A. Yes, sir, with slight variations in amounts.

Q. Now do you know of any other statutes of the United States which prescribes the duties of either Harlan or Valk about which you have been testifying?

A. I cannot say that I do now.

Q. When you testified that you knew what the duties of these men were, and when you testified that you knew about the duties of clerks and officers in the Land Office, did you have in your mind any other statute than these provisions of the appropriation acts to which you have now testified?

A. No, I had in mind the authority which rests in the
93 Commissioner to assign clerks such duties as he may deem advisable.

Q. Now will you tell me what that statute is which gives the authority to the Commissioner or the Secretary which you have just testified about?

A. I do not know as I can be specific in that. It is my understanding that the act which creates the office of Commissioner gives him authority and jurisdiction over all matters in the office and the employees of the office.

Q. And you understand that the statute creating the office of Secretary of the Interior and that department gives him authority to prescribe the duties of the employees in the office?

A. I think it does, though I would refer you to the statute for more specific information.

Q. That is what you had in mind when you were testifying?

A. I know it is the fact that he had that authority, or exercises it at least.

Q. You do not know it at all unless it is statutory. Now, did you

have in mind any particular statute as giving that authority to the Secretary, and if you did, will you refer to it?

A. The Secretary or Commissioner; which do you mean?

Q. Whatever you had in your mind as statutory authority I wish you would refer to it?

A. I cannot refer you to the statute now.

Q. Now, you have assumed in your testimony that the Secretary of the Interior had authority to prescribe these duties?

A. Yes, sir.

Q. Now do you know or can you find out any rule or regulation of the Secretary acting under that authority, prescribing the duties of clerks in the Land Office and employees in the Land Office, to which you have testified?

A. I don't think there is any written instructions from the Secretary in regard to their duties. The assignment of their duties is left to the Commissioner.

Q. Are there any written rules or regulations or directions of the Commissioner prescribing these duties which you have testified about in answer to Mr. Baldwin; either the Commissioner I
94 mean, or head of the Land Office. You mean that, do you not?

A. Yes. Well, take Mr. Harlan, when the Secretary appoints him he appoints him the chief——

Q. I don't want your conclusions, and I move to strike out the answer. I want you to answer my question as to whether there are any written rules or regulations of the Commissioner of the General Land Office; the head of that bureau?

A. I don't think there are, generally.

Q. Then when you were speaking of their duties, you were speaking of duties which are prescribed orally and which have been promulgated orally, or by general custom or practice in the office?

A. Yes, sir, that is right.

(By Mr. BALDWIN:)

Q. I understand you to say, Mr. Macey that the portion of the act, of chapter 1301, 1902, that you have been interrogated about by counsel, is practically the same form and has been for a number of years preceding and the year succeeding the one you have just been shown?

A. Yes, sir, varying slightly sometimes in the amount appropriated.

Q. Now, when you speak about the general law for the Commissioner of the General Land Office to make regulations, did you or not refer to section 2478 of the Revised Statutes, which are under the chapter, title 32, chapter 11, of the act creating that office?

A. The act creating the office of Commissioner.

Q. Look at that act and see if that is it (showing)?

A. Yes, sir.

Mr. CAMPBELL: It is understood that this witness is not finally discharged but we ask him to be returned here for further cross-examination.

Mr. BALDWIN: That is if you give us further notice to that effect, of course.

(By Mr. PLATT.)

Q. This section 2478 says:

"The Commissioner General of the Land Office under the direction of the Secretary of the Interior is authorized to enforce and carry into execution by appropriate regulations every part of the provisions of this title not otherwise specially provided for."

Do you know of any regulation appropriate to those duties of Harlan and Valk to which you have testified, which have been made by the Commissioner of the General Land Office under
95 the direction of the Secretary of the Interior?

A. I don't know of any written regulations, I think you will find most of them oral.

(By Mr. BALDWIN:)

Q. Do you know whether there were verbal regulations or instructions given to the various employees there, including Harlan and Valk?

A. Yes, there was.

(By Mr. PLATT:)

Q. Will you state exactly or as well as you can, what verbal regulation within that section 2478 of the Revised Statutes, was made by the Commissioner of the General Land Office under the direction of the Secretary of the Interior prescribing the duties of Mr. Harlan and Mr. Valk?

A. I don't think there was any general regulations made but they are subject to orders from day to day.

Q. You have testified in answer to Mr. Baldwin that you knew of some verbal regulation made by the Commissioner-General of the Land Office under the direction of the Secretary of the Interior, which prescribes these duties of Mr. Harlan and Mr. Valk which you have testified to. Now, I want you to state just what that regulation is and when it was made.

A. Under that provision, the Commissioner has authority to give them directions.

(Mr. PLATT:)

Q. I move to strike that out. I want him to state if he knows of any such regulations.

The COMMISSIONER: He is asking you if you know.

Q. Any oral regulations made by the Commissioner-General of the Land Office under the direction of the Secretary of the Interior,

relating to the duties of Harlan and Valk which you have testified to?

A. I do not know of anything made by the Commissioner under the direction of the Secretary of the Interior outside of the written directions of the Secretary. Such oral directions as the Secretary might give the Commissioner I would not know about.

96 UNITED STATES
vs.
JOHN A. BENSON.

NEW YORK, January 12, 1904.

Met pursuant to adjournment.

Present: The commissioner, and counsel as on yesterday.

WALTER K. SLACK, sworn on behalf of the Government, testified as follows:

Examined by Mr. BALDWIN:

Q. Where do you reside?

A. San Francisco.

Q. Do you know the defendant Benson?

A. Yes, sir.

Q. Where were you employed from 1897 down to December, 1903?

A. In 1897 I was employed with the San Francisco col-arteral loan bank. In 1898 I went into the employ of Mr. F. A. Hyde.

Q. How long did you remain in his employ?

A. Until October, 1902.

Q. Where did Mr. Hyde have his office?

A. 415 Montgomery St.

Q. Where did Benson, the defendant, have his office?

A. 507 Montgomery St.

Q. How far was Hyde's office from Benson's office?

A. Practically half a block.

Q. What was your position in Hyde's office?

A. I was a clerk.

Q. What was your duties as such clerk?

A. Any duties that would be required of a clerk.

Q. That is very indefinite; what did you do?

A. I did a little of everything.

97 Mr. CAMPBELL: May we have an exception to any evidence introduced by this witness in relation to his connection with Mr. F. A. Hyde?

The COMMISSIONER: If they don't connect the defendant with this transaction, it will be stricken out.

Q. Was it a part of your duties to keep the books there?

A. Yes, sir.

Q. State whether or not there was any telephone connection, direct telephone connection, between the two offices?
A. They did have such a telephone, yes.
Q. A private telephone?
A. Yes, sir.
Q. And with the receiving instrument in what part of Hyde's office?
A. A private office.
Q. And the receiving instrument in what part of Benson's office?
A. I was not very familiar with his office.
Q. It was a private wire between the two offices?
A. Yes, sir.
Q. What business was Hyde in?
A. Locating land.
Q. Land where?
A. In the various States of the United States.
Q. What kind of lands?
A. In the various States, principally the lands selected under the act of June 4, 1897.
Q. Was he also interested in what is known as "school lands" in California and Oregon?

Objected to as leading.

(By the COMMISSIONER:)

Q. Give us your own knowledge, and not what anybody told you. Answer it.
A. Yes, sir; that is California during my time.

(By Mr. BALDWIN:)

Q. That is between 1898 and October, 1902?
A. Yes, sir.
Q. Were there any joint books, or any books kept for the joint account of Benson and Hyde, the defendant, by you, of either
98 what is known as "school lands" in Oregon and California or public lands under the act of 1897, known as "in lieu lands"?

Objected to that the proof should be made by the books themselves, and the question involves a conclusion on the part of the witness.

Mr. BALDWIN: I call upon the defendant to produce the books.

Mr. CAMPBELL: Let the witness step down and give us time to go to California.

The COMMISSIONER: Answer the question. I give you an exception.

A. Yes, sir.

The COMMISSIONER: This is of your own knowledge?
The WITNESS: Yes, sir.

Q. Are you familiar with the *modus operandi* of exchanging what is known as "school lands" for public lands outside of the forest reserves, under the act of 1897?

Objected to as a matter set forth in the statute, and the statute itself described what exchanges can be made, and it is not proper for the witness to testify.

Objection overruled. Exception.

A. Yes, sir.

Q. Are you familiar with the *modus operandi* of obtaining school land and exchanging school land, in force in Mr. Hyde's office during the time that you were there?

A. Yes, sir.

Q. Now just state what that method was.

Objected to, that it cannot be different from the statute, and the testimony is incompetent and stating conclusions.

Objection overruled. Exception.

99 A. By purchasing title which emanate from the State of California.

Q. I want the *modus operandi*.

A. By purchasing, I said, title emanating from the State of California and surrendering those lands to the United States.

Q. And receiving from the United States what?

A. Nothing.

Q. Lands in lieu thereof?

A. By making a selection, yes, sir.

Q. You may state whether or not in Hyde's office there were on file blanks to be used in the selection of these "in lieu" lands.

A. They had those blanks, yes, sir.

Q. As I understand it, under the method that prevailed, an applicant would sign an application for allotments of school lands, and then, if that application was passed upon favorably by the State authorities at Sacramento, the applicant could surrender the land to the United States, or the title to the United States, and select outside of the forest reserve?

Mr. PLATT: I might object to it as leading, but I do not. Now, you make a ruling, assuming that he will connect what was done in Hyde's office, with this defendant, but it does not seem fair that this testimony as to what was done in Hyde's office should be allowed at all on the record against this defendant until they have first connected Hyde. Our objection is that the testimony from this man as to what he knew about what was done in Hyde office, is not admissible until they have in some way made some connection with Mr. Benson.

The COMMISSIONER: I think they have to form a sequence in some way. Unless they connect the defendant with it, it goes out. I allow it and give you an exception.

Mr. PLATT: I don't want to keep insisting on objections, but it is stipulated and understood that all this testimony as to Hyde and what was done in his office, is taken under objection and exception?

100 The COMMISSIONER: Yes.

Mr. CAMPBELL: But this man is asked to testify as to what is contained in the land laws of the State of California, which contains the description of the manner and method of obtaining the land. Now he asks this witness if this was the method. They have introduced the political code, and if thye have not, we will put in the rest of it.

Mr. PLATT: There is the further objection that the testimony is general in character.

The COMMISSIONER: I give you an exception. Go on.

A. In an application was filed for a piece of land within the forest reserve, and the land had been patented, yes.

Q. Did you have in your hands, or did you see during the time of your employment in Mr. Hyde's office any of the applications for these school lands within the State?

A. I saw many such applications.

Q. Did you notice whether or not there were any portion- of such applications that were signed with the signature only and no fil-ing in of the blanks?

Objected to that the contents of the paper cannot be proven in this way. If there was such a paper, it must be produced and proven.

Objection overruled. Exception taken.

Mr. PLATT: We object on the ground that the testimony of this witness on this point is incompetent and irrelevent, and it is an attempt to show the contents of a written documents by the oral testimony of the witness. It is made by law a record which they can either get the document or a certified copy from the surveyor-general's office of the State of California.

Objection overruled. Exception taken.

101 A. That if the State applications you refer to?

Q. Yes.

A. I have seen the time when it was not convenient to fill it in.

Q. Did you ever see the applications that were either handed to you, or you had in your possession, or that you saw in the office of Mr. Hyde, where the applicant's name appeared but the balance of the application was blank when you saw it?

Mr. PLATT: I suppose the witness understands, and I think the commissioner should warn him, that this testimony may tend to incriminate him if it should be followed out to the end.

The COMMISSIONER: He is not obliged to testify to anything that will tend to incriminate him.

Mr. BALDWIN: I think the Government can take care of that.

Mr. CAMPBELL: He lives in the State of California, and the State of California has something to do with it.

A. Yes, sir.

Q. Can you give approximately how often you saw such applications signed in blank?

A. No, sir.

Q. Well, approximately; every day; every week, or every month?

A. I would not attempt to say.

Q. How many did you see in that form, approximately?

A. That I cannot say.

Q. Did you see as many as fifty?

A. No, I don't imagine that I ever have, no sir.

Q. Did you see as many as twenty-five.

A. I can't put any number on them.

Q. Well, quite a number?

A. I have seen some, yes.

Q. In the due course of business in the office, where would the application be signed; in what part of the office?

102 A. Well, the applicants came in and sometimes signed them—there were three rooms really.

Q. Any of them signed in your presence?

A. I have seen applications signed in my presence, yes.

Mr. PLATT: Does he mean blank applications?

The WITNESS: Do you mean entirely blank?

Q. I am speaking now of blank applications.

A. Oh, blank applications?

Q. Yes; where was the signature of the applicants put on?

A. I don't know.

Q. Were they afterwards handed to you?

A. That was the first time I saw them, when they were handed to me.

Q. When you got them, where did you place them?

A. What did I do with them?

Q. Yes.

A. Sometimes they were given to me to fill in, and, generally, sometimes the other clerks would fill them in, but very rarely would I ever fill them in.

Q. Would you place them in any particular place in the office?

A. No, sir; Mr. Hyde had charge of the applications.

Q. You would hand them back to Mr. Hyde?

A. Yes.

Q. At any time that you saw or had in your possession any of these applications signed in blank for school lands, did you notice whether or not they were accompanied with any assignment of the interest, or blank assignment of interest?

Objected to, that the document is the best evidence.

Objection overruled. Exception

(By the COMMISSIONER:)

Q. Were these papers in blank?

A. I have seen a blank paper, but I have not the assignment.

103 (By Mr. BALDWIN:)

Q. Did you ever see accompanying these applications which were signed in blank, an assignment of interest with the assignee's name left out and the description of the land left out, and merely the signature of the assignor?

Objected to as already answered in the negative, and it is cross-examining his own witness.

Objection overruled. Exception.

A. They were not handed to me for the application.

Q. Did you see them; do you know what I mean by this blank form?

A. I do.

Q. Did you have in Mr. Hyde's office blank forms of assignment of the interest of these school lands?

A. Yes, sir.

Q. And you have already testified you had blank forms for applications?

A. I have seen such papers.

Q. You have already testified that you have seen a number of applications with merely the name of the applicant upon them haven't you?

A. What year do you refer to?

Q. I don't care what year.

A. That is what I want to know.

Q. Any year.

A. Yes, sir, I have.

Q. Now, did you ever have in your possession or see any assignment of the same land signed by the applicant, with the balance of the blank not filled in?

Objected to as, if these were blank applications, simply signed and nothing was in them, it would be impossible that there could be any assignment of the same lands.

Objection overruled. Exception.

A. I cannot identify the lands by the name, because one man could file six hundred and forty applications for six hundred and forty acres.

Q. It would have to be not to exceed 640 acres, wouldn't it.

A. Yes, sir.

104 Q. Now, did you see any assignment of lands upon blank forms used in Mr. Hyde's office that were merely signed by the signature or name of the assignor, and nothing else in them?

A. I have seen such papers, yes, sir.

Q. This joint book, or joint account, of Mr. Benson and Mr. Hyde,

did that or not appertain to the land which they were interested in, either the school lands of Oregon or California, or Government lands which were exchanged for them?

Objected to because it is undertaking by this witness, not shown to be competent, to prove the ownership of land in Hyde and Benson; and also as attempting to prove by his oral testimony the contents of these books and his conclusions from them, and it is undertaking to show who owned the land.

(By the COMMISSIONER:)

Q. Did you keep the book?
A. I kept the joint account book, yes, sir.

Mr. PLATT: I understand he is asking whether that book related to lands owned by Benson and Hyde. That is a matter you could not prove orally. He is undertaking to show that it related to lands which were owned by these two men jointly, and that is a question of title.

Question withdrawn.

Q. Did this book of account which you say you kept, refer to school lands or Government lands, in which Benson and Hyde were interested?

Objected to on the same grounds.
Objection overruled. Exception.

Q. How was the book entitled, if at all?

Objected to, that the book is the best evidence.
Objection overruled. Exception taken.

A. "Joint account, Hyde and Benson" I think.

105 Mr. PLATT: I understand you base your ruling on the assumption that this is a book in the possession of the defendant?

The COMMISSIONER: Yes.

Mr. PLATT: Now, the testimony clearly shows that book was in Hyde's possession. There is nothing to show, and has not been in the testimony, that Benson had the book, or ever had it, and he did not have it.

106 The COMMISSIONER: We will get at it hereafter. I allow this evidence in on that ground.

Q. Now, will you state, if you can, what the entries were generally?

Objected to on the same grounds. Objection overruled. Exception.

A. Well, various amounts expended and received, debits and credits in the account.

(By the COMMISSIONER:)

Q. You testified you kept these books and made the entries?
A. Yes, sir.

(By Mr. BALDWIN:)

Q. In the account of what; with reference to what?

Mr. PLATT: Perhaps we may as well have a similar stipulation that any evidence with regard to the contents of this book is taken under the same objection, ruling and exception.

The COMMISSIONER: Yes, you may have that reservation.

A. Well, the various expenses made by Mr. Hyde, as well as the expenses made by Mr. Benson, and joint money received.
Q. Joint money received from what, and with reference to what?
A. The sale of various reserved selections, what we might call "lieu."

107 Q. Forest reserve selections based upon what, Mr. Slack?
A. Based upon the sale of the right to select under the act of June 4, 1897, and the various debits as might occur, such as small cash payments.

Q. And on selections of Government lands outside of the forest reserves?
A. The right to select.
Q. For what kind of land, in lieu of what?
A. Land within the forest reserve.
Q. What is known as school land?
A. School lands, or any land.
Q. Within the State of California or Oregon?
A. Or whatever they might be.
Q. Were there school lands among them?
A. Well, a great many——

Mr. PLATT: We object to that. Is he going to be allowed, because he kept a book in Hyde's office, to testify to what these lands were?

The COMMISSIONER: If he knows.

Mr. PLATT: This is a matter of record.

The COMMISSIONER: They have called on you to produce the books and have the right to put in secondary evidence.

Mr. PLATT: This man is now being asked as to whether
108 these lands were school lands. Now, how does he know? It is a matter of who had title to these lands.

Objection overruled. Exception.

A. A great many of the deeds to the United States were, as a matter of fact, school lands.

Mr. PLATT: I move to strike that out.

(By the COMMISSIONER:)

Q. Was that an entry in the book?
A. They wouldn't make the full entry of it.

Mr. PLATT: I move to strike that out as not an answer to the question at all.

Motion denied. Exception.

(By the COMMISSIONER:)

Q. Were there any entries in this book showing this?

A. Only memoranda generally referring to other books or to certain docket numbers.

(By Mr. BALDWIN:)

Q. In the office of Hyde and in the business of Hyde and Benson, were the numbers 16, or sections 16 and 36, used?

A. Coupled with the township and range, yes.

Q. Now, what in the office of Hyde with reference to the joint account of Hyde and Benson, what did these numbers 16 and 36 mean; what did they refer to?

Same objection, ruling and exception.

A. It would be used to designate the number of the section.

Q. A section where; in what part of the State?

109 A. Unless it was accompanied also by township and range, it didn't mean anything, except the number 16 and number 36.

Q. Does not that refer to school land sections, the 16 in one State and 36 in the other?

A. It could refer to that.

Q. Does it in the office, or did it?

A. If the State line run through the township, yes.

Q. Did you draw up any monthly statement from the book kept by you for Mr. Benson?

A. I did, yes, sir.

Q. Did you receive any monthly statement from him about the business of Hyde and Benson as appearing on this joint account?

A. I would receive them from Mr. Hyde.

Q. They were received from where, if you know?

A. Presumably from Mr. Benson's office.

Mr. PLATT: I move to strike that out.

The COMMISSIONER: Strike it out.

Q. Did you have any conversation with Mr. Benson about that joint account at any time?

A. I had at various times, yes, sir.

Q. What was that conversation about?

Mr. PLATT: Won't you specify the conversation. He has had them at various times, he said.

Q. Now give the first conversation you had, as near as you

110 can, that *you* between you and Benson, about this joint account?

A. Well, that I couldn't do. When I first went there I had had conversations with *with* reference to it.

Q. Did you have this joint account book in your possession when you conversed with him about it?

A. Yes, sir.

Q. Did you ever see him inspect that book?

A. I have.

Q. Now give any conversation that you can recall, no matter when it occurred, about that joint account of Hyde and Benson, or any statement made from that book?

A. Well, I have had various conversations with him.

Q. Give us the substance of them as near as you can?

A. To find out to what particular accounts these moneys received should be charged.

Q. What did he say; did he point out?

A. He would give me a memorandum, or have it sent to me, to what they should be charged.

Q. Did you ever have a dispute with him about the account as it appeared, or any account as it appeared on this joint account book?

A. Well, I particularly myself?

Q. Yes; any talk you had with him?

A. I had a dispute with him as to some matters. Yes.

Q. What was that; what was said by you and what by him, as near as you can recall?

A. Well, he and Mr. Hyde had a dispute and called upon me to adjust it.

111 Q. What was it?

A. One claimed there was a greater amount owing to him than the other would allow, and it was adjusted.

(By the COMMISSIONER:)

Q. What was this about; groceries?

A. No, sir, about the various land accounts.

(By Mr. BALDWIN:)

Q. What did Mr. Benson say to you and you to him, at any time of this dispute?

A. One day we had a quarrel, yes.

Q. What did he state to you about this account that you kept, and what answer did you make to him?

A. He said he did not believe it was right.

Q. Did you answer that?

A. I told him that I thought that it was.

Q. Now, how did that dispute end; what did you say and what was said and done, if anything, by Benson?

A. It dragged along some time and I got an expert and went over it and adjusted it and it was accepted on those terms.

Q. Accepted on both sides?

A. Yes.

Q. You put an expert on this joint account book that you kept?
A. Yes.
Q. This book that you kept, and the accounts concerning which you had this dispute with Benson referred only to school
112 lands and lieu selection lands and lands that were exchanged by Hyde and Benson.

Objected to as leading. Objection overruled. Exception.

A. It related to anything affecting any selection of that kind.

Mr. PLATT: Now, if your honor please, this witness cannot be cross-examined without the papers. Your honor has admitted a lot of general statements of this witness which I, as I understand it, as least possible of dispute. You can see that he comes forward as a sort of a star witness, of the kind whose testimony is not very credible in any way, on its face, and we must get the papers from San Francisco in order to cross-examine him, and therefore we ask that his testimony be suspended until we can get the papers.

Mr. BALDWIN: The Government insists that this cross-examination shall go on now.

The COMMISSIONER: Go on and examine the witness as far as you can, Mr. Platt.

Mr. CAMPBELL: We do not waive asking you to hold this witness. We are not going to bring him back from California.

Mr. BALDWIN: Then let the defense defray his expenses if he stays here.

Mr. CAMPBELL: No, sir. We did not bring him, and if he
113 goes back we will strike his testimony out.

Mr. PLATT: I do not know exactly how much the stenographer has taken on this record, but I want to put on the record a motion that the cross-examination of this witness be suspended until the defendant, who lives in California, can have an adjournment and time to obtain from California books and papers that are necessary, and are now stated by counsel to be necessary for the cross-examination of this witness. I wish to make that motion and have it on record.

Mr. BALDWIN: The Government objects to it.

The COMMISSIONER: Well, I will reserve decision on that and think it over a little.

Mr. PLATT: So that we suspend the cross-examination then.

The COMMISSIONER: My own idea was to go on with the witness as far as you can.

Mr. PLATT: I do not want to go on with the cross-examination of this witness.

The COMMISSIONER: Go on with the next witness, then.

Mr. PLATT: Then his cross-examination is suspended?

The COMMISSIONER: Until I decide this motion. Go on as far as you can.

114 Mr. PLATT: We are not prepared to go ahead with any cross-examination until we can get our books and papers,

Our cross-examination refers to chiefly those things which he has testified to about these accounts, and we must have them to examine him.

The COMMISSIONER: I will reserve decision and you must take the responsibility of my decision if you do not cross-examine him. My idea now is that you should go on and examine the witness as far as you can.

Mr. PLATT: I think we had better take a ruling. Are we or are we not to have our motion granted, to be allowed to get these papers before we cross-examine the witness?

The COMMISSIONER: You may go on with the cross-examination of the witness and come to a stage where it will be absolutely necessary to produce these books, and that is another proposition. I don't want to deprive the defendant of any rights to a full examination here.

Mr. CAMPBELL: I want to state the reasons here, being familiar with the land practice as it is done in my State. Your honor has permitted this man to bunch a statement that certain applications were made for the 16 and 36 sections school land and "lieu" land.

Now, those are matters of record. The attorney's name is
115 attached to each and every one of them. We can procure from the surveyor-general of the State of California, and it is our intention to do so, to cross-examine this witness every application that has been filed in the State of California or in the State of Oregon by either Mr. Benson or Mr. Hyde within the last four or five years, and make him pick out each one of those he says he filled in in blank. We can procure each and every assignment, for under the laws of the State of California, it runs ninety days before a certificate is issued, and after that time it is saleable by virtue of the statute. We can get a certified copy of every assignment of a certificate of sale from the State of California and make him pick out which those were.

Mr. BALDWIN: That would not be competent in this court.

Mr. CAMPBELL: It would not, on cross-examination of a witness to show him all these things and ask him as to each one of these? It would be a very peculiar rule of cross-examination and they must have very peculiar rules of evidence in this district.

The COMMISSIONER: Can't you examine this witness outside of that book?

Mr. CAMPBELL: Now there is the book. What has he testified to but the fact that there were blank applications filed, blank
116 assignments made and a joint account made?

The COMMISSIONER: He has testified to some facts of conversation between him and Benson.

Mr. CAMPBELL: About the joint account.

Mr. BALDWIN: I want a ruling and I want it to appear on the record whether counsel do or do not refuse to go on with the cross-examination at this stage?

Mr. CAMPBELL: We are not going to say that until we make up our mind later on.

The COMMISSIONER: I will rule that you go on now as far as you can with the cross-examination.

Mr. PLATT: Mr. Commissioner, may we have until the next hearing to decide this question as to whether we will proceed with the cross-examination of this witness?

The COMMISSIONER: I want to finish today with what witnesses we have here. I will let this man go until 2 o'clock if you want that time, and go on with some other witness.

117 MARION L. DOYLE, being duly sworn on behalf of the Government, testified as follows:

Examined by Mr. BALDWIN:

Q. Where do you reside?
A. San Francisco, California.
Q. Do you know F. A. Hyde?
A. I do.
Q. Do you know John A. Benson the defendent here?
A. Yes, sir.
Q. Were you ever employed by Mr. Hyde?
A. Yes, sir.
Q. When did you commence your employment with him and how long did you stay with him?
A. I entered Mr. Hyde's employ about the latter part of 1898 and remained there about two and a half years.
Q. Did you ever see Mr. Benson in his office?
A. Yes, sir.
Q. Do you know whether or not they had a private telephone between their offices?
—. I know that they had.
Q. What business was Mr. Benson in?
A. The same business as Mr. Hyde; land business.
Q. What business was Hyde in?
A. In the forest reserve business.
Q. Now state what that business was so that we may understand it.

Objected to, that it does not appear in what capacity witness was employed, nor that she is competent.

Q. In what capacity were you employed in Mr. Hyde's office?
A. I had charge of the forest reserve branch of his business.
Q. Now I repeat the question I asked before. Described the nature of the business and how it was done?
A. He secured title to State lands and surrendered them to the Government.
Q. That is State lands in any particular State?

A. California and Oregon.

118 Q. And what is known as land inside the forest reserve?

A. Yes, sir.

Q. Are you familiar with the way the business was transacted in the office?

A. Yes, sir.

Q. You may state whether or not they had any blank applications there that they kept on file for school lands or reserve lands?

Objected to on the same ground stated as to similar questions when the previous witness was examined.

Objection overruled. Exception.

A. I had charge of the forest reserve part of the business, and there was another young lady in the office who had charge of the State lands, so what I know of my own knowledge of the business is just so far as it relates to the forest reserve part of it.

Q. Are you familiar with the method of obtaining and making out the applications for those lands or school lands to be exchanged for the Government lands, in the office of Mr. Hyde?

Objected to, that the witness states her knowledge is limited to the forest reserve lands.

Q. That refers to all these?

A. Yes, sir.

Mr. PLATT: She says another young lady had charge of the applications for the State lands and her knowledge was limited to the forest reserve lands? Now, I do not see why counsel should be allowed to go further.

By the COMMISSIONER: Give us your own knowledge of it.

Q. (Question read.)

A. No, not the school lands.

(By Mr. BALDWIN:)

Q. Well, lands that were within the forest reserve and to be exchanged for land without the forest reserve land?

A. Yes, sir.

Q. That came under your cognizance?

A. Yes, sir.

119 Q. That is, lands in the forest reserve in the States of California and Oregon?

A. Yes, sir.

Q. To be exchanged for lands outside of what is known as the forest reserve under the act of 1897?

A. Yes, sir.

Q. That you are familiar with?

A. Yes, sir.

Q. Now state what y ou know about the method of obtaining ap-

plications from parties to obtain lands for the purpose of exchange, if any, in the office of Mr. Hyde.

A. Well, whenever it was desired to select any lands outside of forest reserve, I would make out the necessary papers, take the application, which was the application blanks we had there already signed, and fill in the description of the land desired to be selected and supply the basis to be surrendered in lieu of these selected lands.

Q. Now you say applications already signed. What do you mean by that?

A. Applications for the land outside of the forest reserve, signed by the person who had the title to the land in the forest reserve which was surrendered to the Government.

Mr. PLATT: I move to strike that out. We are now talking about what took place in the office, and the witness perhaps may be quite competent to testify as to some transactions, but to undertake to give wholesale transactions of this kind without production of the papers, is objectionable.

Objection overruled. Exception.

Q. Did you notice whether or not any of these applications, or any portion of the applications that came to your notice, and which you say you have filled out, were signed in blank?

A. Yes, sir, they were usually signed in blank.

120 Q. That is to say, the signature of the applicant with nothing else in the document?

A. Nothing else.

Mr. PLATT: It is understood that this is all taken subject to the objection as proving the contents of papers by oral testimony.

The COMMISSIONER: Certainly; that is understood.

The WITNESS (continuing): We had on file a supply of all these papers which were necessary for the forest reserve business, and I, whenever it was desired to make an application for some land, would go to the file and take these papers out and fill in the description, the date, and so forth.

Q. Then you took out a blank which had been signed by some person?

A. Yes.

Q. And then you would fill it in?

A. Yes, sir.

Q. From whom would you get the information about filling it in?

A. Well, it was the same instructions right along, to simply fill in the description of the selected land and supply the basis, fill in the date, and so forth.

Q. So that at the time you started to fill them in, there wasn't even the date in the instrument?

A. No, sir.

Q. Now, upon these applications was there a blank jurat to be sworn to?

A. No, sir.

Q. Was there an affidavit that accompanied the application?

A. Yes, sir.

Q. Did you notice whether any signature to the affidavit when you filled them out—were they also signed in blank?

A. Yes, well, they were handed to me and I would fill in the description of the selected land.

Q. Was the signature there?

A. In some cases it was.

(By Mr. PLATT:)

Q. On the affidavit?

A. Yes, sir.

(By Mr. BALDWIN:)

Q. In some cases the signature was there.

121 A. Yes, sir.

Q. But was the notary's seal and affirmation there?

A. No.

Q. What did you do with these applications thus filled in by you and signed in blank and the affidavit, after you received them?

A. I wrote the letter and forwarded them all to the register of the land office.

Q. I am speaking before they were actually sworn to or any signature in the jurat there?

A. I would send them down to the notary.

Q. By whom?

A. The office boy; sometimes it was Charley Johnson.

Q. Was the applicant or affiant there at the time you sent them to the notary?

A. No, sir.

Q. You would simply take these applications and fill them in and put the date in, and take the alleged affidavit with the signature and fill that in, and then give it to a messenger to take down to a notary?

A. Well, it was not necessary for the application to be taken before a notary. There was no jurat.

Q. I mean the jurat?

A. That paper was sent down to the notary.

Q. And the affiant or person who signed it was not there?

A. Yes, sir.

Q. How frequently would you send those to the notary?

A. Sometimes once a day and sometimes several times, or frequently during the day.

Q. How many would there be at the various times that you sent them?

A. Well, there would be probably one or two, and sometimes as many as fifteen.

Q. Do you ever recall a time when there was a large number at one time sent down by Johnson by you?

A. Yes, sir, I remember.

Q. Do you remember the number or about the number that was sent, and about when it was?

A. I remember that there were about ten or fifteen were about as many as I sent at one time.

122 Q. Did you subsequently receive those back from the notary?

A. Yes, sir.

Q. With the notary's signature and seal on them?

A. Yes, sir.

Q. And then what would you do with them after you got them?

A. I would attach the affidavit, non-mineral affidavit, to the application, and the abstract of title and the deed of surrender, if it happened to accompany the papers, and then write the letter and forward it to the register of the land office.

Q. Now, you spoke about a deed of surrender. Were there any blanks kept in the office of Mr. Hyde for that purpose?

A. Yes, sir.

Q. Did you notice whether they were also signed in blank?

A. No, sir.

Q. You did not notice whether they were signed in blank?

A. No, they were not signed in blank.

Q. How were they signed?

A. They were just simply the blanks to be used.

Q. They were not signed at all?

A. No, they were not signed, Nearly all the base lands in the forest reserve, had been surrendered previous to the time of my employment.

Q. Did you ever see this book kept by Mr. Slack containing the joint account of Mr. Benson and Mr. Hyde in these forest lands?

A. Yes, sir.

Mr. PLATT: There should be before that answer the objection to this attempt to prove the contents of the book by incompetent testimony. The witness has not even stated that she knows anything about what was in those books, and yet she has been asked whether she has seen a book containing a joint account about these lands.

Q. This non-mineral affidavit was an affidavit that had to accompany the application that there was no mineral land embraced in this application?

Objected to. Objection overruled. Exception.

A. Yes, sir.

Mr. PLATT: Does your honor rule that she can testify as to the

contents of that blank and the provisions in it without laying any foundation for it?

123 Q. That was the practice in the office of Mr. Hyde?
A. Yes, sir.

Mr. BALDWIN: I will consent that the previous question and answer be stricken out.

Q. Now, in the office of Mr. Hyde, with which you say you are familiar, were there what was known as non-mineral affidavits that accompanied these applications?
A. Yes, sir.
Q. And are those the affidavits which you say you sent to the notary?
A. Yes, sir.
Q. And are those the affidavits which accompanied the application that was sent to the register of the land office?
A. Yes, sir.
Q. Now, who gave you the description of the land that you were to insert in these applications?
A. Mr. Hyde.
Q. Now, did you insert the description of the land also in these non-mineral affidavits?
A. Yes, sir.
Q. Was there any power of attorney that accompanied the papers sent to the register of the land office at Sacramento?
A. No, there — no powers of attorney.
Q. Were there any powers of attorney used there?
A. Yes, sir.
Q. With reference to these selections?
A. Yes, sir.
Q. Where were they made out, if you know?
A. They were made out in Mr. Hyde's office.
Q. Who made them out?
A. I made them out.
Q. Was the description of the land also inserted in the powers of attorney?
A. The description of the base lands.
Q. You mean the lands within the State?
A. The lands within the forest reservation.
Q. Did you ever see any money paid to Mr. Benson in the office, growing out of these?
A. No, sir.

124 Cross examination by Mr. CAMPBELL:

Q. What is your business, Miss Doyle?
A. I am — stenographer.
Q. How long have you been engaged in that business?
A. About ten years.

Q. Where were you engaged prior to going into the service of Mr. Hyde?

A. I was employed in the office of the Baltimore & Ohio R. R. Co.

Q. How long were you with them?

A. I think perhaps about three years.

Q. How long were you with Mr. Hyde?

A. About two and a half years.

Q. Under what circumstances did you cease your employment with Mr. Hyde?

A. Well, he told me just before—well, about the latter part of 1899—that there was a possibility of the forest reserve act being repealed, or so modified that he would not have any more business in that line, and that if I heard of any good position, he would advise me to accept it. He said, You can take your chances and remain here if you wish, but if you hear of a good position I would advise you to accept it, so I hea-d of a position with Wells, Fargo & Co.'s bank, of San Francisco, and I told him of it and he said, I think you had perhaps better take that position, for the chances are the forest reserve act would be repealed.

Q. How long did you remain with Wells Fargo & Co.?

A. I am still with them; I have been there just about two years now.

Q. What services have you been rendering for the Government of the United States within the last nine months?

Objected to as incompetent, immaterial and irrelevant.

A. No service at all.

Q. Have you been doing any stenographic work for Mr. William F. Burns?

Same objection. Objection overruled.

125 The COMMISSIONER: Answer that question and we will stop that kind of examination in that particular line.

Mr. CAMPBELL: We except to that.

A. No service at all.

Q. How did you come here?

A. I received a telegram telling me to come here.

Q. From San Francisco?

A. Yes sir.

Q. Were there any arrangements whereby you were to come upon a telegram?

A. I made my own arrangements.

Q. Were there any prior arrangements whereby you were to come if you received a telegram?

A. Well, during Mr. Burns' investigation of this case he said it was very likely that I may have to go to Washington. He said "Could you go," and I said, "Yes, I could arrange with the bank

people to get away for a short time" so then I received a telegram and I came.

Q. When did you receive the telegram?

A. I can't tell you the exact day; it was about three weeks ago. It was just the 22nd of December.

Q. You say that during Mr. Burns's investigation in San Francisco, this was told you by him?

A. Yes, sir.

Q. Did you see Mr. Burns in San Francisco?

A. Yes, sir.

Q. Frequently?

A. Not frequently; I saw him several times.

Q. Did you tell Mr. Burns what you have testified to here?

A. Some of the things I told him.

Q. Did you make an affidavit?

A. No, sir.

Q. Did you make a statement and sign it?

A. I made a signed statement.

Q. To whom did you give it?

A. To Mr. Burns.

Mr. CAMPBELL: We ask prosecution to produce the statement.

Mr. BALDWIN: We decline to do so.

126 Mr. CAMPBELL: We ask the commissioner to require the prosecution to furnish the statement which she made to Mr. Burns, the complainant in this action.

The COMMISSIONER: I don't believe you are entitled to that statement. The Government declines any how.

Exception taken.

Q. Now, you say that you had charge of the forest reserve lands in Mr. Hyde's office?

A. Yes, sir.

Q. You say that when you went there that most of what are called base had been deeded to the Government of the United States?

A. Yes, sir.

Q. That was lands which were within the forest reservation?

A. Yes, sir.

Q. And either school lands, or was owned by private individuals and had been deeded to the Government?

A. Yes, sir.

Q. It was the practice of the office to take the deed for that land and select some outside lands which were unoccupied Government lands, and then ask the Government practically for an exchange?

A. Yes, sir.

Q. You had nothing whatever to do with any application to the State for any State lands?

A. No, I didn't have charge of that.

Q. Consequently you know nothing about that?

A. No, sir.

Q. You do know, you say that they had in Mr. Hyde's office applications for those lands?

A. Yes, sir.

Q. You know, as a matter of fact, that you can go into any bookstore on the Pacific coast and buy them, don't you?

A. Yes, I suppose you could.

Q. They are on sale, all those applications?

A. Yes.

Q. And also non-mineral affidavits are on sale in every bookstore there?

A. Yes, sir.

Q. Now, do you want us to understand that you would take those blank applications—they were signed by certain persons, you say?

127 A. I remember several instances where they were signed, but that, however, was exceptional. They were, as a rule,—the affidavit was made by some person familiar with the land.

Q. Now, how many cases were there when those blanks were signed and the description of the land left out?

A. As I say that was exceptional; there were not many cases.

Q. Those cases, you say, that was an exceptional case?

A. Yes, sir.

Q. In most every case they were signed by a regular applicant?

A. Yes, not by the applicant; by the person who wanted to procure the title to that land, who was not, in most cases, the applicant, because the applicant for the land was the person who had the title to the land, the person who surrendered the land to the Government.

Q. The person who obtained the title to the Government land?

A. Yes, sir.

Q. But that application was signed by him?

A. Yes, sir.

Q. He having in some way connected himself with the basis, or with the lieu basis?

A. Yes.

Q. Now can you tell me the name of a single person that was attached to those blank applications?

A. Well, I think, if I remember correctly, John A. Barion made several applications.

Q. Do you know him?

A. Yes, sir.

Q. Where does he live?

A. In San Francisco.

Q. Can you give me another name?

A. That is one that I remember. I don't think I can recall any others.

A. He had made an application for these Government lands and had furnished a basis for it?

A. No, Mr. Hyde was the owner of the base land, the forest re-

serve land, and somebody else wished to select some other
128 land in lieu of that and Mr. Hyde furnished with that an affidavit signed by Barion and as I recall, the description of the selected land was not in that affidavit.

Q. The description of the selected land was not in the affidavit at the time the affidavit was made?

A. Yes, sir.

Q. Who was the notary?

A. I could not say as to who the notary was. I think it was Burns, but I am not sure; William S. Burnes, I think his name was.

Q. Do you know where his office was?

A. In San Francisco. Thomas S., his name was.

Q. How near Mr. Hyde's office was he?

A. Just about a block away.

Q. Well, the description of the land was put into these blanks before they were sent to the notary, were they not?

A. Yes, sir.

Q. Did you ever take any of these papers to the notary yourself?

A. No, sir.

Q. Then you are not prepared to swear that John A. Barrion, or whosever's name was attached to it, did not appear before the notary, are you?

A. No, but I am quite sure he did not.

Q. But you don't know?

A. The reason——

Q. I don't want your suspicions or reason. I want to know whether you know.

The COMMISSIONER: The witness has a right to answer the question, and you can move to strike out if not responsive. Is that the whole of your answer, or do you want to say something more?

The WITNESS: That is all my answer.

Q. Who signed these application blanks, if you know, for the forest reserve?

A. Various people. Among others, I recall the name of H. S. Morris and H. C. Morris; Elizabeth Diamond, F. A. Hyde, and C. W. Clarke; Walter N. Bush, L. L. Rothenberg. That is about all I can remember.

129 Q. Do you know and are you willing to be understood as testifying that these persons did not make the regular affidavits?

A. They did not; it was not necessary that they should; they were the applicants for the land.

Q. They were the applicants?

A. Yes, sir.

Q. And you say this man Barion was the man who made the non-mineral affidavit?

A. He did in two or three cases.

Q. Who made them in other cases?

A. Various people familiar with the land; the selected land.

Q. The people who selected the land made the non-mineral affidavits?

A. No, not the people who selected the land, the people in whose interest the land was selected.

Q. And who were familiar with it?

A. Who were familiar with it. It was supposed they were familiar when they made an affidavit as to the character of the land.

Q. Do you know whether or not Mr. Barion was familiar with this land?

A. I do not.

Q. Then you are not able to say that he did not appear before the notary public when the non-mineral affidavit was taken, are you?

A. He was out of town. That is why he signed the application before he went; before the description of the selected land was placed in the affidavit.

Q. Did he know the selection?

A. I do not know.

Q. You don't know whether he knew what land was going to be selected?

A. No, I don't know.

Q. And that is all you know about it, isn't it?

A. Yes, sir.

Q. You wrote these descriptions over Mr. Barion's name?

130 A. I don't remember as to that; I suppose I did; I had charge of that work and I usually did, but it may be that some one else did it.

Q. Can you remember any case where you wrote a description over some one's name that was not a *bona fide* applicant?

A. In the mineral affidavits?

Q. Yes.

A. No, I don't remember any case. I may have, as I say, written in this Barion affidavit, but I don't remember that I did.

Q. Or in the application for the exchange?

A. Oh, yes, in the application I always did.

Q. Can you tell me at what instance you wrote this description where the application had been signed in blank?

A. I filled in both the description of the selected land and the forest reserve land in a great many applications which were previously signed by these different persons whose names I have mentioned.

Q. How many years were you engaged in that?

A. About two and a half years.

Q. And under the direction of Mr. F. A. Hyde?

A. Yes, sir.

Q. You wrote in the descriptions Mr. Hyde told you to or furnished the descriptions to you?

A. Yes, sir.

Q. And then you sent the papers to the notary?

A. Well, as I said before, these applications were not required to be sworn to. I sent the non-mineral affidavits and powers of attorney, when they were used.

Q. And you know when you sent these affidavits that the name had already been signed to it and that the party was out of town and could not swear to it?

A. Well, I thought he was out of town; I thought that was why he signed them before going. Mr. Hyde may have taken him in his office and said well, now I want to select——

131 Q. I don't want to know what he may have done, but just what did you do. Did you or did you not know when you sent any of these papers down there, that the notary had put his signature on it without the man being before him and swearing to it?

A. Well, we frequently sent papers down there and I knew it.

Q. You knew it?

A. Yes, sir. I sent the boy down without any person accompanying him, and I didn't suppose he was going to meet them on the way.

Q. But did you know when you sent these papers down there that the notary, Mr. Thomas S. Burns, was to place his signature on these papers—on the jurat to an affidavit, that the party did not appear before him and swear to?

A. Oh, I guess I had better say no, inasmuch as I was not present before the notary at the time.

Q. Then you do not know?

A. No, I do not know that.

Q. And you do not know it yet?

A. No.

Q. But you supposed it, you say?

A. Yes, sir.

Q. And you acted upon that theory?

A. Yes, sir.

Q. When the papers came back, then you forwarded them to the Land Office?

A. Yes, sir.

Q. You attached this non-mineral affidavit to the application for the exchange together with the deeds?

A. Yes, sir.

(By the COMMISSIONER:)

Q. Did this notary public himself ever bring you back any of these papers, or bring them back in the office, that you saw him personally?

A. Never; office boy used to bring them back.

Q. He never himself brought any back that you sent down?

A. No.

(By Mr. CAMPBELL:)

Q. Now, I would like to ask you to be particular and think and see if you can state to the commissioner a single instance of the name of a single party that you know, of your own knowledge, signed an application in blank, which application was taken to the notary with an affidavit, which affidavit was taken to the notary and to which affidavit the notary affixed his jurat without the party having been present and swearing to it; a single case?

132 A. Well, I think I answered that in the other, that I said I never went before the notary and therefore I could not know of my own knowledge that the person was not present.

Q. Can you give a single case in which you assumed that and acted upon that assumption?

A. Well, in the case of this Barion I thought he was out of town.

Q. That is the only one?

A. That is the only one, yes.

Q. How many applications were those?

A. I think we had five or six blanks signed by him, and perhaps two or three of them were used.

Mr. CAMPBELL: Now I desire to ask the district attorney whether or not he has in his possession the statement made by this lady to Mr. Burns which she testifies to as signed by her.

Mr. BALDWIN: I decline to make any statement about it.

Mr. CAMPBELL: Then we ask an order that it be produced to the defendants for the purpose of a further cross-examination of this witness.

The COMMISSIONER: I do not see the materiality of it. The motion is denied.

Exception taken.

Q. When did you arrive in Washington, Miss Doyle?

A. I think on the 30th of December.

Q. Who met you at the train there?

A. Nobody.

Q. Did anyone accompany you from San Francisco to Washington?

A. No, sir.

Q. Where did you go when you arrived in Washington?

A. I went to the Lincoln hotel.

Q. Did you go before the grand jury on that day of the 30th?

A. Yes, sir.

Q. Who examined you before the grand jury?

Objected to. Objection sustained. Exception.

133 Q. Did you see Mr. Burns whom you had seen in San Francisco, in Washington?

A. Yes, sir.

Q. Did he take you to the grand jury?

Objected to.

A. No, sir.

Q. Was Mr. Burns before the grand jury when you were examined?

Objected to. Objection sustained. Exception.

(By Mr. BALDWIN:)

Q. You were su-pœnaed to appear before the grand jury at Washington?

A. Yes, sir.

Q. Pursuant to that su-pœna, you went from San Francisco to Washington to testify?

A. I was su-pœnaed after my arrival in Washington.

Q. You were notified to come and then su-pœnaed when you arrived?

A. Yes, sir.

Q. With reference to these Barion affidavits, when you filled in the affidavit was the name of Barion already there?

A. I said that I did not remember whether in this particular instance or not I filled in the description, but I remember we had those on file and they were used, and accompanied some of the forest reserve selections.

Q. You mean to say you would go to the file case and take the Barion affidavit that was not sworn to?

A. Yes.

Q. And then you gave them to a messenger to take them to a notary?

A. Yes, sir.

Q. Mr. Barion was not in your presence when you gave them to a messenger?

A. No, sir.

Q. Had you seen him that day?

A. Well, it is so long ago I don't recollect.

Q. He was not there when you sent them down?

A. No, sir.

Q. Now, was he there when the messenger brought them back from the notary?

A. Not that I recall.

134 Q. The notary's seal and jurat was not there when you sent them down?

A. No, sir.

Q. But were there when they were brought back?

A. Yes, sir.

(By Mr. PLATT:)

Q. Do you remember what you filled in these affidavits over Barion's signature?

A. I said that I did not remember whether or not I filled anything in but I know that they were used in connection with these forest reserve selections and the description was necessarily filled in.

Q. So far as you remember then they may have been complete, as far as anything over Barion's signature, at the time that you took them for use out of the case?

A. Oh, no; they had his name alone and the rest of the form was printed.

Q. Including the description of the land?

A. No; the description of the land was never printed.

Q. Then you filled it in?

A. Some one filled it in; I don't know that I filled it in.

Q. You either filled it in or had it filled in by somebody?

A. I either filled it in or some one else did.

Q. Did you get these Barion affidavits in blank from the case?

A. Yes, sir.

Q. And gave them to somebody to fill in or filled them in yourself?

A. Yes, sir.

(Mr. CAMPBELL:) We do not care to have this witness retained. She can go back to California if she pleases.

135 CHARLES H. JOHNSON, sworn on behalf of the Government, testified as follows:

Examined by Mr. BALDWIN:

Q. Where do you live?

A. In San Francisco.

Q. By whom you were employed in San Francisco?

A. Mr. F. A. Hyde.

Q. When did you commence your employment with him?

A. The latter part of 1900.

Q. How long did you remain with him?

A. About fifteen months.

Q. What was your employment or duty?

A. Regular office boy.

Q. Do you know the defendant Benson?

A. Yes, sir.

Q. Did you ever see him in that office?

A. Yes, sir.

Q. Frequently?

A. Well, once in a while.

Q. Did you ever carry applications and non-mineral affidavits for Miss Doyle, or any other person in the office, to the notary's?

A. Yes, sir.

Q. How frequently would you do this?

A. Sometimes once and sometimes five or six times a day.

Q. From whom did you receive these affidavits?
A. From anybody in the office.
Q. You have received them from Miss Doyle?
A. Yes.
136 Q. Did you take them down to the notary and if so, for what purpose?
A. The notary was to execute them, sign his name, and give them back to me.
Q. What notary did you take them to?
A. Mr. Burns, Harry Lask and Frank Ford and Mr. Henry P. Tricot.
Q. Did the notary write his name upon them?
A. Yes sir.
Q. Was the person whose affidavit was alleged to be taken, there?
A. No, sir.
Q. How many were you accustomed to take; what was the highest at one time?
A. As much as forty at one time.
Q. To what notary?
A. Frank Ford.
Q. Any of the affiants accompany you?
A. No, sir.
Q. Any of them there when the notary filled out his jurat?
A. No, sir.
Q. What did you do with these affidavits after you got them back from the notary; where did you take them?
A. Gave them back to whoever gave them to me.

(By the COMMISSIONER:)

Q. He signed his name and put the seal on them?
A. Yes, sir.
Q. And you took them back to the office?
A. Yes, sir, and handed them back to whoever gave them to me.

(By Mr. BALDWIN:)

137 Q. What other papers did you take down beside non-mineral affidavits?
A. Well, power of attorney.
Q. Did the notary put his jurat on those?
A. Yes, sir.
Q. Would the person who signed the power of attorney be there?
A. No, sir.
Q. What did you do with them after you got them back?
A. Gave them back to whoever gave them to me.
Q. Did you ever receive any papers direct from Mr. Hyde to take to the notary?
A. Yes, sir.
Q. Did you take them to the notary?
A. Yes; they were usually put in an envelope and sealed and I

would give them to the notary and he would give them back, put them in an envelope sealed.

Q. Give them back to you?

A. Yes, sir.

Q. That is those received from Hyde?

A. Yes, sir.

Q. I understand you to say you went down several times a day with those papers sometimes?

A. Yes, sir.

Q. Did you ever take any applications for the purchase of school lands down?

A. Yes, sir.

Q. To these same notaries?

A. Yes, sir.

Q. From whom did you receive those applications?

A. I would receive them from Miss Farwell and Mr. Slack.

Q. Did the affiant accompany you?

A. No, sir.

138 Q. They were filled out by the notary without their being present?

A. Yes, sir.

Q. To whom did you return them?

A. To the parties who gave them to me in the office, or Mr. Hyde.

Q. Do you know any of the employees in the office of Mr. Benson?

A. I know who they were, yes, sir.

Q. Did he have a messenger?

A. Yes, sir.

Q. Did you ever see him get any papers in the office?

A. Well, he came to the office, and once in a while they would hand them to him.

Q. He would come to Mr. Hyde's office?

A. Yes, sir.

Q. What would be handed to him?

A. Well, the papers; I never took particular notice, but it was handed to him and he would bring them back to the office.

(By the COMMISSIONER:)

Q. Take them away and bring them back?

A. He would take them from Hyde's office and bring them to Benson's office, and sometimes he would bring papers from Hyde's office over to Benson's office.

(By Mr. BALDWIN:)

Q. Did you know just what those papers were that you took from Hyde's to Benson's office?

A. No.

Q. Did you notice anything about any blank forms in the office that were signed without being filled in?

A. No, I didn't notice.

Q. I mean just blank applications with just certain sig-
139 natures to them?
A. No, I didn't see any that was signed; they might have Hyde's name on them.
Q. Did you personally go to the file cases?
A I went to the cases, yes, sir.
Q. Did you personally receive any of those where simply a signature was on without the balance of the application being filled in?
A. Mr. Hyde's name was signed on them, and that was all I ever noticed.

Cross examination by Mr. PLATT:

Q. These papers Hyde gave you to take to the notary, were usually in a sealed envelope?
A. Yes, sir.
Q. And the notary would give you the papers back in a sealed envelope, which you would take back to the office?
A. Yes, he would put them right back and seal it and I would bring them to Mr. Hyde.
Q. You didn't open those envelopes?
A. No, sir.
Q. You didn't know what was in them?
A. No, sir.
Q. These papers that you received from Miss Doyle and others, the affidavits and powers of attorney which you have described, which you have taken to the notary, how did you know what they were?
140 A. It was written on the back what they were.
Q. Written or printed?
A. Printed.
Q. That is all you know about it?
A. Yes, sir.
Q. And the same is true in regard to these applications for school lands; how do you know they were?
A. It said on the top of them, "Application to purchase school land."
Q. Printed papers?
A. Yes, sir.
Q. And that is all you know about it?
A. Yes, sir.

(By the COMMISSIONER:)

Q. They were not in envelopes?
A. No, these were the ones given to me to bring to the notary.

(By Mr. PLATT:)

Q. You didn't read the papers?
A. I have glanced over them, yes, sir.

Q. Will you state an instance, or can you tell the signature that was on any of these papers you took over there?

A. No, sir.

Q. Can't you remember a single name?

A. No; it was none of my business what names were on them.

Q. You said you looked at them?

A. I glanced them over; I didn't read them.

Q. Did you see the signature of any person you knew?

A. Mr. Hyde's name.

141 Q. Did you ever see the signature of any person who had signed these papers besides Mr. Hyde?

A. No, sir; never paid no attention to it; none of my business; bring them to the notary, got them fixed up, and bring them back. I waited for him to fix them up.

Q. You saw him attach his signature?

A. Yes, sir.

Q. And his seal?

A. Yes, sir.

Q. You saw signatures on them, but can't remember any particular signature?

A. No, sir.

(By Mr. BALDWIN:)

Q. Did you notice whether or not the papers which were in the sealed envelope which Mr. Hyde personally gave to you to take to the notary, what the notary did with them when you took them there?

A. He signed them and put his seal on them.

Q. In your presence?

A. Yes, sir.

Q. And put them back in the envelope?

A. Yes, sir.

Q. Were the same kind that you took down, as far as the outward appearance was concerned?

A. As far as the outward appearance was concerned, yes.

(By Mr. PLATT:)

Q. What did you see endorsed on the back of these papers that you took, in the sealed envelopes?

A. On the backs of them?

Q. Yes.

A. It says, deeds, and from one party to another party; that

142 is what it said; was from F. A. Hyde, or somebody else.

Q. You remember distinctly there were such papers as that in these envelopes?

A. Yes.

Q. You saw the back of them when the notary opened them?

A. Yes, sir.

Q. Which notary?

A. Thomas S. Burns was the one that got most of them.
Q. You remember some particular occasion when Burns opened one of these envelopes and you saw that on the back of it?
A. Yes, sir.
Q. Can you fix the date of it?
A. No, sir, I cannot; one would come one day, and one three or four days afterwards.
Q. Can you fix any occasion in particular that you remember?
A. The exact date?
Q. Yes.
A. I cannot.
Q. You don't remember any name except Hyde's name?
A. No, sir.
Q. But you remember distinctly it is a deed?
A. Yes, sir.
Q. Because it said so on the back?
A. Said so on the back.

143 WOODFORD D. HARLAN, sworn for the Government, testified as follows:

Examined by Mr. BALDWIN:

Q. What position did you occupy in the Land Office of the Interior Department since 1897?
A. I was chief of the special service division.
Q. Of the department?
A. Of the General Land Office.
Q. How long did you hold that position?
A. Until the 1st of April, 1903.
Q. And since the 1st of April, 1903, what position did you occupy?
A. That of fourth class clerk in the contest division of that office.
Q. I show you what purports to be an oath and signature to it before a notary. Is that your signature?
A. Yes, sir.
Q. Is that your oath of office that you took at the time you were appointed chief of this special agent division?
A. Yes, sir.
Q. I show you another oath dated March 31, 1903. Is that your signature?
A. Yes, sir.
Q. Is that the oath of office you took in this position you now occupy?
A. Yes, sir.

Mr. BALDWIN: I offer in evidence the two oaths of office, together with the certified copies of appointment of W. D. Harlan to
144 the respective positions.

Received without objection as Exhibits 1 and 2 of this date.

Q. At the time that you took your oath of office, Mr. Harlan—the first oath of office—were you placed in charge of the special agent division of the Land Office?

A. Yes, sir.

Q. Now, in the due course of business, what came to you for consideration?

A. All matters relating to frauds against the public lands of the United States, or trespasses, or illegal fencing; all crimes against the public land act.

Q. State whether or not it was a part of your duty to take action for the purpose of investigating where charges had been made about the acquiring of public lands illegally.

Objected to on the ground it is irrelevant and incompetent; that the statute under which this charge is made it is necessary that any duty that he has must be prescribed by law and not in any other way, and the law should be produced as the best evidence.

Objection overruled. Exception.

A. It was my duty.

Mr. PLATT: Now, to save time, I suppose we are to have
145 the same stipulation and understanding that we did with regard to prior witnesses, namely, that any testimony that he may give in regard to what his duties were, in answer to the questions of the district attorney, shall be given subject to our objections to its relevancy and competency, that have been made heretofore?

The COMMISSIONER: That is right. I have made that rule, both for prior and hereafter.

Q. To whom, in the due course of business in the office, did the complaint come, if any such, about the obtaining of lands illegally; public lands?

A. They came to my division of which I had charge.

Q. They came to you personally?

A. No, sir; they came there as a matter of routine.

Q. They came to you as a matter of routine?

A. Yes, sir.

Q. Whose business was it to give instructions to the special agents to investigate such obtaining lands fraudulently or illegally?

A. It was my duty.

Q. And to whom, in the due course of business, were those special agents required to report?

A. Commissioner of the General Land Office.

Q. And in the due course of business, where did they finally come to?

A. Came to my division.

146 Q. In the due course of business, if a report is made by a special agent assigned by you or by the office, was it or not a part of your duty to receive it and make a report or decision thereon?

A. It was; that is, I prepared the letter for the Commissioner to sign.

Q. You prepared upon these reports in any individual case, in the form of a letter which was sent to the Secretary of the Interior, or Commissioner of the Land Office to sign, in the due course of business?

A. When a special agent made a report to the Commissioner of the Land Office, that report came to my division. It was there written up on evidence submitted by the agent, and that letter I initialed before it went down to the Commissioner for his signature. That is all there was to it.

Q. Now, in the due course of business, if an investigation of a special agent showed that there was a violation of the criminal statutes of the United States in obtaining land fraudulently, where then would that report go?

A. Well, in a case where title had passed from the United States, and a proceeding of that kind was instituted it was my duty to prepare on the agent's report submitted to the Commissioner, a letter stating the facts of the report and the conclusions that I
147 arrived at, and when he signed that—when the Commissioner signed that, it was sent to the Secretary. These letters were addressed to the Secretary of the Interior under those circumstances, and the Commissioner signed them the report to the Department of Justice to take action to annul the illegally acquired title.

Q. Or to prosecute criminally, if the facts justified?

A. Yes, sir.

Q. The reports of the special agents, were they confidential reports?

Objected to as a conclusion. Objection overruled. Exception.

A. Yes, sir, they were regarded as confidential.

Q. Now, these reports of the special agents were reports of facts upon which the Government office would take action in the due course of business?

Objected to as incompetent and something which cannot be proven in that way, and leading.

(By the COMMISSIONER:)

Q. These reports were sent to you in the ordinary course of business?

A. They were sent to me.

Q. Then what did you do with them?

A. I examined the affidavits submitted to the special agent who made the examination.

148 Q. And took such action as necessary?

A. I will explain the whole routine, if necessary. On these affidavits the special agent who made the examination, made a recommendation that the entry be canceled, and on that report I took action.

(By Mr. BALDWIN:)

Q. Then upon the return of the report made by the special agent you draw this letter for the Commissioner to sign, with reference to some action to be taken by the department?

A. Yes, sir.

Q. Do you know William E. Valk?

A. Yes, sir.

Q. Was he employed in the Land Office?

A. Yes, sir.

Q. In what capacity from 1897 down to April, 1903?

A. Well he was a fourth class clerk a portion of that time in my division, and the balance of the time he was a $2000 clerk, called a law examiner, or examiner of contests. A portion of the time he was not in my division; after March 1, 1902, he was in another division.

Q. Do you know the defendant John A. Benson?

A. Yes, sir.

Q. When did you first meet him and where?

A. I met him in the late fall of 1897, or in the early part of 1898, at the office of Capt. A. E. Thomas of Washington city.

Q. What was Mr. Thomas's business; what kind of an
149 office?

—. He is a lawyer & a claim attorney & a capitalist.

Q. How did you happen to go to that office?

A. A clerk from Capt. Thomas's office——

Mr. CAMPBELL: I object to that as incompetent and immaterial.

Q. How did you come to go there?

A. I went there to meet some gentleman. I didn't know who he was.

Q. Did you find the defendant there when you got there?

A. Yes, sir.

Q. Did you have any talk with him?

A. I introduced myself as Mr. Harlan and he told me his name was John A. Benson.

Q. Now state the conversation you had at that time?

Mr. CAMPBELL: In 1897.

The WITNESS: Latter part of 1897 or in the early part of 1898.

Mr. CAMPBELL: We object to it. What can it have to do with this case?

Objection overruled. Exception.

A. Mr. Benson told me that he was interested in forest lieu selections and that they were coming in now, and in a short time they would be coming in in large numbers, and he wanted to know if some arrangement could not be made whereby they could be gotten out and passed through the office. I told him I didn't know;
150 that there was a gentleman in my division who had special charge of that, by the name of Mr. Valk; that I would have to see him; that I thought some arrangement might be made.

Q. Any further conversation?

A. Well, I think there was some talk with reference to the compensation to be paid. I am not positive as to the amount.

Q. What was it, as near as you can recall?

A. As near as I can remember, it was ten cents an acre for those that were gotten.

Q. That is, land; patent lands in which he was interested?

A. Yes, sir, as new selections under the forest act of June 4, 1897. I told him I would see Mr. Valk and see what he thought about it. Mr. Benson asked me to have Mr. Valk call at Thomas' office at four o'clock or soon thereafter as he could.

Q. On the same day?

A. On the same day, if it was satisfactory to Mr. Valk. I saw Valk and told him I had seen Mr. Benson and we had had a conversation.

Mr. PLATT: I move to strike that out.

The COMMISSIONER: Strike it out.

Q. Did you tell him to go and see Benson?

Objected to. Objection overruled. Exception.

A. Yes, sir.

Q. When did you next see Benson?

151 A. About the latter part of September, 1899, or first of October, '99.

Q. Did you see Benson the same day or next day after you sent Valk to him?

A. Now, sir, I did not.

Q. Getting back to the first conversation with Benson, have you stated all the conversation that occurred on that day?

A. No, sir.

Q. State it all.

Same objection, ruling and exception.

A. We understood one another——

Q. I don't care about the understanding; I want what was said.

A. I told Benson that would be satisfactory to me if it was to Mr. Valk. Mr. Benson said that they would be paid for as the cases came out. I told him that I didn't want anybody interested in this way any more than what was necessary; that I did not like to have too many people interested in the arrangement; that it was dangerous, and we agreed that Mr. Benson should pay me, and that I was to pay Mr. Valk any share that was due him for passing these cases through. I believe that is all the conversation there was.

Q. Was anything said about Mr. F. A. Hyde at that time by him?

A. I don't remember whether there was or not; I couldn't say positively.

Q. Do you recollect whether anything was said by Benson

152 as to his relations with Hyde?

Objected to as already answered.
Objection overruled. Exception.

A. I think I asked Benson if he was in partnership with Hyde, and he told me, as near as I can remember, that he was not; that he was doing business on his own responsibility.

Examination adjourned to Wednesday, January 13, 1904, at 10 a. m.

153

UNITED STATES
vs.
JOHN A. BENSON.

NEW YORK, January 13, 1904.

Met pursuant to adjournment.
Present: The commissioner, and counsel as before.

WALTER K. SLACK, recalled for cross-examination.

(By Mr. CAMPBELL:)

Q. Mr. Slack, you were reasonably familiar with the volume of business done by Mr. Hyde in his office during the time you were there?

A. Yes, sir.

Q. Did he not do a large land business in lieu lands and school lands?

A. He did, yes, sir.

Q. Did he have any other accounts with any other persons in relation to school lands and lieu lands, than Mr. John A. Benson?

A. He had various clients, yes, sir.

Q. Now, you have spoken about this joint account. Can you describe this joint account so that we may get some idea of it in relation to school land. For instance, if there was a sale or transfer of section 16, in township 1, west Mount Diablo, base and meridian, would that be entered in joint account of Benson and Hyde if it was to their joint account?

154 A. Providing it had a township.

Q. Either townships, one west or one south; any township?

A. If it was sold on joint account, yes, sir.

Q. Were there not a great many sections of school land sold to other persons by Hyde, that were in no way connected with the so-called joint account?

A. Yes, sir, there were.

Q. How did the number of sections that were charged in the joint account, compare with the number of sections that were sold to the various other clients, if you know?

A. Well, that is a matter I could not swear to, Mr. Campbell.

Q. Now, I want to ask you this question, Mr. Slack, if you do not

know that the method of doing business between Mr. Benson and Mr. Hyde was not this: If there was a person that wanted a certain number of sections of school land, more than Mr. Hyde could furnish him, if Mr. Benson did not furnish the overplus? And that was not the way it was charged in the joint acct.?

A. In some cases, yes.

Q. And was it not the fact that in the joint account each one of the persons, Mr. Benson on the one part, and Mr. Hyde on the other, furnished their own base lands?

A. In some cases, yes.

Q. Now, do you know of a single case where they owned jointly,—that is, Benson and Hyde owned jointly—the base?

A. Of my own personal knowledge, no, but from what Mr.
155 Hyde has told me, yes.

Q. I don't want what Mr. Hyde told you, now. Do you know, of your own knowledge, of a single section of land that was obtained by virtue of these blank applications that you testified to yesterday, or the blank affidavits that were afterwards filled in, which was entered in this joint account, or in which Mr. Benson had any interest?

A. I do not know of any.

Q. You do not know of any?

A. I do not know of my own knowledge.

Examination adjourned to Tuesday, February 2, 1904, at 10:30 a. m.

156 UNITED STATES }
vs.
JOHN A. BENSON. }

NEW YORK, February 23rd, 1904.

Hearing resumed pursuant to adjournment.

Present: The commissioners. Mr. Baldwin for the Government. Mr. Platt, and Mr. Campbell, for the defendant.

WOODFORD D. HARLAN, examination resumed.

By Mr. BALDWIN:

Q. In your testimony on the adjourned day you had testified to your first conversation with Mr. Benson when you went to see him and had a talk or talks at Mr. Thomas' office. You stated that conversation was in the late fall of 1897. Now was that conversation about when the matter was discussed as to the compensation you were to get?

Mr. PLATT: Objected to. The charge that is before your honor is that in March, 1903, and in December, 1903, certain sums of money were given by defendant to Mr. Harlan to induce him to violate what is alleged to have been his duty. That is, to keep

secret a report of some special agents which had not yet been
157 made, but which was to be made on the recent investigations made by the Secretary of the Interior or under his direction. Now it is not relevant to any such charge to put in evidence testimony about some arrangement or understanding between Mr. Harlan and the defendant in 1897. Let us come down to the case and stick to the case.

The COMMISSIONER: It might be a continuous performance.

Mr. PLATT: It wouldn't make any difference if it was.

The COMMISSIONER: I will overrule the objection and give you an exception with leave to strike out if not connected.

Mr. PLATT: I think this should be considered with care, and not decided offhand. It seems to me we are entitled to have it carefully considered as to whether or not some arrangement or understanding—some crime if you please—committed in 1897 should not be brought into this case. You should guard carefully against it.

The COMMISSIONER: If it was a single instance it would be
158 barred by the statute of limitations, but suppose they continued it down to date, it would be relevant under a conspiracy charge.

Mr. PLATT: This is not the conspiracy charge at all, but the specific charge that in March, 1903, certain money was given for a specific purpose and in December, 1903, certain money was given for a specific purpose. That is, to divulge a paper which was or was to be on file in the department. Now let us get down to that charge. We are entitled to the protection of this commissioner against that kind of thing. You stand here as a judge between the Government and these people, and we are entitled to the protection of the commissioner, and we insist on having it.

Mr. BALDWIN: There are two questions to be considered, not only whether the money was paid or offered, but the question is what was the transaction between this witness and the defendant that led up to his giving of the alleged bribe, and how far the transactions explain the necessity for the very offer that occurs in this case. We have a right to know what Benson's relations with the Land Office and the Interior Department were through this witness, that explains the circumstances of the giving of the offer of the
159 bribe in this case. I might say if it hadn't any connection with the particular giving of the bribe here, if from the nature of what he proposes to narrate itself is a cognate offence, I have a right to have it on the record for the purpose of showing Benson's intentions when he offered this bribe.

Mr. PLATT: There is nothing in the indictment to support anything of that kind.

The COMMISSIONER: I am inclined to allow it in for what it is worth.

Mr. CAMPBELL: Has your honor ever read this complaint?

The COMMISSIONER: Yes. Go ahead. I will allow it and give you an exception, unless it is connected it has to go out.

Exception taken.

A. I think I testified that the meeting was in the latter part of 1897 or early part of 1898.

Q. You testified to seeing Benson again in the latter part of September, 1899, or 1st of October, 1899?

Mr. PLATT: I move to strike out all there is about the conversation in 1897, because it appears there is nothing continuous about it.

160 The COMMISSIONER: I think we will get at it if we go ahead.

Mr. PLATT: You deny my motion?

The COMMISSIONER: Yes, with leave to renew it unless connected. Exception taken.

Q. Where did that second conversation that you testified to on September, 1899, or October, 1899, take place?

Mr. PLATT: Objected to on the ground that it is irrelevant and incompetent.

Objection overruled, with leave to strike out unless connected. Exception taken.

A. In the Arlington hotel at Washington, D. C.

Q. State what that conversation was?

Mr. PLATT: Let this be all taken subject to the objection and exception.

The COMMISSIONER: Yes.

A. I called to see Mr. Benson at his request received through a messenger, and he wanted me——

The COMMISSIONER: Tell us what he said, is the better thing to do.

A. Well, I suppose after we passed greetings, he asked me
161 if I couldn't get him the lines of proposed forest reservations and additions.

Q. In what State?

A. In different States, or to get the lines of forest reserves and additions to them.

Q. Where were you to get those lines?

Objected to.

The COMMISSIONER: Tell us the conversation. Tell us what he said, and what you said.

A. If you give me time, I will do that.

Mr. PLATT: We won't give you time to draw conclusions. State what he said and what you said.

A. I told him I thought I could get those lines and furnish them to him.

Q. Go ahead and give the conversation that occurred at that time?

A. I can't remember the conversations, but in pursuance of that conversation——

Q. Give such of the conversation as you can now recall?

A. That is about all I remember; that he wanted those lines, and I told him I could give them to him.

Q. Did you tell him where you were to get them?

A. No sir, I did not.

Q. Anything said about any letters?

A. I told Mr. Benson I would communicate with him, and
162 send him these proposed reserves as they originated and were created.

Q. Did you get those lines, the descriptions of the lands and where they were?

A. I procured the outline of the proposed reserves in northern California, and sent them to Benson in pursuance of this conversation.

Mr. PLATT: I move to strike that out, and come down to what he did. He says he sent them to Benson. State what he did.

The COMMISSIONER: He sent them to Benson, and then what?

Mr. PLATT: What did he do; mailed them, or what did he do?

A. I sent them to Mr. Benson at his address in San Francisco, California, enclosed in an envelope.

Q. Directed where?

A. John A. Benson, 507 Montgomery street, San Francisco, California.

Q. Then what next occurred? A. The next thing took place, Mr. Benson sent me a letter, in which was $100.

Mr. PLATT: Never kind about that.

Q. Have you the letter?

A. No sir, I have not.

Q. What has become of it?

A. I destroyed it.

Q. Did you notice the post office mark on it when you received it?

163 A. It was postmarked, San Francisco, California.

Q. Enclosed in a postpaid wrapper?

A. Yes sir; properly stamped and addressed.

Q. To whom?

A. It was addressed to R. I. Smith.

Q. How did it happen to be addressed to R. I. Smith?

A. That was in pursuance of an agreement Benson and I had made to hide my identity in this matter.

Q. Where did you have an arrangement with Mr. Benson; what conversation, when you agreed upon the name of R. I. Smith?

A. I think that was in our first interview in 1897 or 1898

Q. Where was the letter addressed; I mean to what particular place?

A. It was addressed from San Francisco.

Q. To what place, in Washington?

A. To R. I. Smith, box 182, Takoma Park, D. C.

Q. In the District of Columbia?

A. Yes sir.

Q. What was in that letter?

A. A $100 bill.

Q. At which conversation was it that you had the talk with Benson about Mr. Valk?

A. Why it was in our first conversation in 1897 or 1898.

Q. What was said by you to him about Mr. Valk?

A. I told Mr. Benson that Mr. Valk was a clerk in my division, and had got charge of the forest lieu selection business, and it would be necessary for me to have an understanding with him
164 in order to do this business as he had all the work to do and examined the cases, and I told Mr. Benson that I thought it would be satisfactory to Mr. Valk to go into such an arrangement of the kind, and Mr. Benson then asked me if I wouldn't have Mr. Valk call and see him at Thomas' office directly after four o'clock that day. I told him I would see Mr. Valk and see what he thought about it. I went back to the office and saw Mr. Valk and told him——

Mr. CAMPBELL: That has been gone over.

Q. You went back and had a talk with Valk?

A. Yes sir.

Q. Now you have stated two conversations you had with Benson; when did you next see him?

A. I next saw Benson on the 28th of May, 1902.

Q. Where did you see him?

A. I saw him at the New Willard hotel.

Q. Prior to this third time that you saw Benson and subsequent to the letter enclosing the $100 bill, did you have any other letters?

A. I received one other letter with a $100 bill in it.

Q. When was that received?

A. Directly after the one I testified to before, probably a month or so.

Q. Bearing the same post office address and stamp?

A. Yes sir.

165 Objected to as leading.

Q. Addressed to whom?

A. It was addressed R. I. Smith, and postmarked San Francisco, stamped, containing $100 bill, but no writing or anything to show what the letter was in reference to.

(By the COMMISSIONER:)

Q. How did you get that letter addressed to Smith?

A. That was in pursuance of an arrangement made between Mr. Benson and myself.

Q. Yes, but how did you manage to get hold of a letter addressed to another person?

A. I took it out of the box; it came into my box; it came to my son-in-law.

(By Mr. BALDWIN:)

Q. That was your box?

A. That was my box.

Q. Now reverting back to this second conversation, was there anything else that you were to furnish to Mr. Benson other than descriptions of these lands or anything said about it?

A. Well, he wanted me to furnish him——

Mr. PLATT: Wait. What did he say.

A. He said he would like to have me furnish him with such information as I could respecting the matters in which he was interested.

(By Mr. PLATT:)

Q. Was anything said about the matters in which he was interested, what they were?

166 A. No sir, there was not.

(By Mr. BALDWIN:)

Q. You say you sent him some sort of a paper after that second conversation about these lands. In what form was that paper?

A. Well, it was a portion of a map of California, the General Land Office map of California, of the northern portion in which these proposed reserves were located, the lines of them. I just cut off the northern part of the State and pencilled off the outline of the proposed reserves in that region of the country.

Q. Anything in that map or paper in reference to any Oregon lands?

A. My impression is that I also sent him then or later an outline of the Rogue River reserve in the southern part of Oregon.

Q. Now it was after or before you sent this map or paper with the lines of this land that you received this money that you have already specified?

A. It was after.

Mr. PLATT: Which map do you refer to?

Mr. BALDWIN: The map of the northern part of California, and with reference to the proposed Rogue River reservation.

Mr. PLATT: You don't make it entirely clear as to which it was in your question.

Q. I understand that you sent this paper?

167 Mr. PLATT: Let him state it.

Q. All right. State it?

A. I sent a proposed reserve in the northern part of California to Mr. Benson I think before I sent the Rogue River, and following the first transmission of the proposed reserve Mr. Benson sent me $100, and I am not sure whether he sent me the second $100 before the Rogue River information was sent him or afterwards, but it was near at that time.

Q. Now coming down to the third conversation in which you saw him at the Willard hotel in May, 1902, do you now recall the date in May?

A. I think it was the 28th of May, 1902.

Q. How did you happen to go there?

A. I received a note from Mr. Benson by messenger, asking me to call there.

Q. Did you go there?

(By Mr. CAMPBELL:)

Q. When he speaks of these notes, are all of them destroyed?

A. Yes sir.

Q. You haven't any notes at all?

A. No sir; I have no writings from Mr. Benson at all.

(By Mr. BALDWIN:)

Q. Where did you go?

A. To the Willard hotel in Washington.

Q. What happened there; what part of the hotel did you go to and what happened?

168 A. I went to room 515 and found Mr. Benson in. Mr. Benson wanted to know if I didn't want to meet an agent of his that was located in Washington with a desk room in the office of Britton & Gray. I told him that I did not; I didn't want to deal with more than one man.

Q. Did he say anything about where he was at that time?

A. Yes, he told me that that gentleman was in a closet.

Q. What closet?

A. Adjoining his room. I told him I didn't want to see him, and then he put me in the other closet, and I heard the gentleman that was in the other closet retire and leave the room.

Q. Did you see him?

A. I positively declined to see him and did not see him, and in fact never have seen him; I don't know the gentleman.

Q. How did you happen to go into that closet?

A. How did I happen to go in there?

Q. Yes.

A. Mr. Benson requested me to go in while he let the other gentleman out.

Q. After you came out of the closet, did any other conversation take place?

A. I told Mr. Benson that the San Francisco mountain reserves

were about to be consolidated into one general reserve. There were a number of even sections that were included in what they called San Francisco mountain reserves, not one reserve, but a
169 number, and each one a section, and they had distinct lines which circumscribed a lot of railroad sections, and there was a great deal of trouble between the Government and the owners of these titles in the lands that were not properly included within the reserve and the Government was about to make an exchange with the railroad companies and other parties interested.

Q. Continue your conversation with Mr. Benson after you left the closet?

A. We talked in reference to the propositions that were before the Secretary of the Interior, the United States Attorney General, and the Commissioner of the Land Office, with reference to the consolidation of these proposed forest reserves into one solid reserve, and I told Mr. Benson that I could furnish him with the names of the owners and holders of these private titles within that proposed consolidation, and I named them over to Mr. Benson and he says You are too late; I have that same information from my attorneys, Britton & Gray, who are attorneys for these different parties and they have already told me that information. I told him that I thought that in view of the fact that I was acting in good faith *and* I thought the matter ought to be worth something. He says I will give you, to
170 show my good faith in the matter, $200. I am short of money now, and I will send you some when I go to San Francisco.

Q. What did you say in response to that?

A. I told him that I was a little hard-up, and I would like to have a little money at the present time, and he said he was short; that he would give me $50, and send me some when he got to San Francisco. My back was towards the window, and when I went out of the room I found a $50 note on the bed, which I took possession of and put in my pocket.

Q. Had he stated anything about the bed before you found it?

A. I think he said You will find something on the bed.

Q. That ended the conversation on that day, did it?

A. I think that was the substance of it.

Q. Did you have any communication with him by letter subsequently?

A. Well, I don't remember any specific information I sent him, but I wrote him as to the matters were progressing.

Q. Did you get any other remittance of any kind at any time after that conversation?

A. Mr. Benson in pursuance of that sent me $100 in a letter.

Q. How was that letter addressed?

A. Addressed San Francisco the same as the others to R. I. Smith.

171 Q. The same box number?

A. The same box number, Takoma Park, D. C.

Q. Now Mr. Harlan, when, if at any time, did you ascertain that there was any investigation being made by any of the officers of the Interior Department; give us the date as near as you can?

A. Sometime in January, 1903, I ascertained that Mr. Pugh and Special Agent Steece of the General Land Office, were making an investigation in reference to charges preferred by a man named Snyder or Zabriskie, alleging that Mr. Benson was engaged in certain illegal practices——

Q. You needn't go into that. Did you learn there was an investigation concerning John A. Benson in any way, yes or no?

A. Yes sir.

Mr. PLATT: One moment. I object. He has no right to testify as to what he learned.

The COMMISSIONER: A certain investigation was being made. That is all.

Mr. PLATT: Somebody must have told him.

The COMMISSIONER: I sustain the objection.

Q. Now did that conversation come to you in the Interior Department in which you are employed?

Objected to unless shown that the defendant was present.

172 Objection overruled. Exception.

Mr. PLATT: I want my objection on the record. I object to this on the ground that it is hearsay and I move to strike out the statement that he heard there was an investigation, as hearsay.

The COMMISSIONER: Pursuant to the investigation, did something take place with Benson. Did you do anything or he do anything, or what?

A. I informed Mr. Benson that this investigation was going on.

Q. You informed Benson an investigation was going on, how?

A. By letter addressed to Benson.

Q. Where?

A. 507 Montgomery street, San Francisco, California.

Q. Did you state to him what the nature of the investigation was in the letter, yes or no?

A. Yes, sir.

Mr. BALDWIN: I ask that the defendants produce the letters.

Mr. CAMPBELL: Since when did the Government of the United States get so great that it could make anybody produce evidence against themselves?

173 Mr. BALDWIN: Will you produce it or not? The defendant stands mute.

Mr. PLATT: We don't stand mute at all. The idea that the district attorney should call upon us to produce evidence against ourselves is perfectly improper.

Q. What did you say to Mr. Benson in the letter about this investigation?

Mr. CAMPBELL: Objected to on the ground it is incompetent, irrelevant and immaterial, and not the best evidence.

The COMMISSIONER: He has called for the best evidence, and you cannot produce it, and I allow secondary evidence. Answer the question.

A. I informed Mr. Benson what was going on, that charges had been made by a gentleman named Snyder who was formerly a clerk in the employ of Mr. F. A. Hyde, I think, of San Francisco, who gave an outline of how Mr. Hyde and Mr. Benson were buying up base lands in forest reserves so as to exchange.

(By Mr. PLATT:)

Q. This was all in your letter, was it?

(By Mr. BALDWIN:)

Q. I am asking you to state what was in the letter; don't state anything outside of it?

A. I don't remember what was in the letter specially.

174 Q. Give us the substance of it as near as you can remember it?

A. The substance that this investigation was going on, and charges had been preferred by Snyder.

Q. Against who?

A. Against Mr. Benson and Mr. Hyde.

Q. In relation to what?

A. With relation to the various lieu lands and base lands.

(By Mr. BALDWIN:)

Q. Is that what you said in the letter?

A. Yes. I think I told Mr. Benson in the letter that Mr. Slack of San Francisco, was also mentioned in the letter of Mr. Snyder with information as to Mr. Benson.

(By Mr. PLATT:)

Q. Go back to where Mr. Slack, because I could not hear from that; that he was doing what?

(By Mr. BALDWIN:)

Q. State what you said in the letter to Benson about Slack?

A. That Slack's name was mentioned in the letter of Snyder's, and was the man who could give information in reference to the business.

Q. Anything said further in the letter that you now recall?

A. No sir, I can't remember anything else.

Q. Anything said about a report?

A. I think I told him that I would keep him advised as matters progressed.

Q. Now did you know that Mr. Pugh and Mr. Steece were absent

from Washington after this letter you have just mentioned was written to Benson on this investigation; did you know it of your own knowledge?

A. Yes sir.

175 Q. Do you recollect of their coming back to Washington?

A. I recollect Mr. Steece's coming back; I never saw Mr. Pugh.

Q. Did you write any other letters to Benson about this investigation?

A. I wrote a letter to Benson some time in March telling him——

Mr. PLATT: The same objections.

The COMMISSIONER: Yes.

A. (continued.) Telling him that Pugh and Steece were making that investigation, and were about to submit their report, and that I was trying to get a copy of the report and if I did so I would send it to him. I thought the report was worth $500 or $600.

Q. Now did you have any response?

A. Yes sir.

Q. What has become of the letter?

A. Destroyed it.

Q. What was stated in the letter?

A. I don't think there was anything said in the letter; they were blank letters enclosing money.

Q. How much?

A. The first letter enclosed two $100 bills, and the second letter came a little later, probably a week, and contained two $100 bills.

Q. Do you remember when you got the first letter?

A. I do not, no sir; some time in March.

176 Q. What year?

A. 1903.

(By the COMMISSIONER:)

Q. How was it addressed?

A. These letters were addressed the same as the others, R. I. Smith, box 182, Takoma Park, D. C.

(By Mr. BALDWIN:)

Q. And bore what post office mark?

A. San Francisco, California.

Q. The first letter you say contained how much?

A. Two $100 bills.

Q. And the next one?

A. Two.

Q. And any other remittance?

A. There was a third one I think that contained $100.

Q. Now after you received the remittances that you have just testified to, aggregating $500., when did you next receive a communication from John A. Benson at all?

A. I don't think I ever received anything since.
Q. Did you write to him any time later than that?
A. I wrote to him on the 30th of October, 1903.
Q. And it had a postpaid wrapper?
A. Yes sir.
Q. Addressed to his address where?
A. 507 Montgomery street, San Francisco, California.

Mr. BALDWIN: I call upon the defendant to produce it. I would like to have the defendants say whether they will produce it or not.

177 The COMMISSIONER: Will you produce the letter?

Mr. PLATT: I have nothing to say except that he has no right to make the demand.

Q. Go on and state the contents of that letter to Benson?

Mr. PLATT: Objected to as not the best evidence and that no proper foundation in the evidence has been laid for giving any statement of the contents of the letter.

(By Mr. BALDWIN:)

Q. Did you keep a copy of the letter?
A. No sir.
Q. Do you recollect its contents?
A. In substance, yes sir.

Mr. CAMPBELL: It is not shown that he received that letter. You cannot convict a man criminally because a man happens to send him a letter.

Q. Was this letter deposited in the mail?
A. Yes sir.
Q. With a postpaid wrapper?
A. Yes sir.

(By the COMMISSIONER:)

Q. Did you deposit it?
A. Yes sir.
Q. Ever get any response to it?
A. No sir.

(By Mr. BALDWIN:)

Q. Did you ever talk to Benson about the letter afterwards?
A. Yes sir.
Q. Now go on and state the contents of the letter?

178 A. On the 17th of December, 1903, I called at the New Willard, room 213——

Q. No; I want the letter. What did you write to him in October. You can come down to the conversation later?

A. I wrote to Benson that an investigation was going on in the department, and that I was holding the gentleman from Maryland

firm. Didn't mention the name, but I knew he would understand it was Mr. W. E. Valk, and he was telling nothing. That was the substance of the letter.

Q. Was that all you stated in the letter?

A. I think it is, yes sir; I don't remember anything more material.

Q. Did you get a response?

A. No sir.

Q. Now when did you next see the defendant?

A. On the 17th of December, 1903.

Q. Where did you see him?

A. At the New Willard hotel, Washington city, room 213.

Q. How did you happen to go there?

A. Mr. William E. Valk told me Benson was in town, and I called on Mr. Benson.

Q. Did you see Mr. Benson?

A. I saw Mr. Benson, yes sir.

Q. Where did you see him; what part of the hotel?

A. I saw him in the lobby, I think, about receiving a telegram, and I followed him to his room; he went upstairs into the room 213, and I followed him.

Q. Had you been to his room before you saw him in the lobby?

A. Yes sir, I had been there and found him out, and left a
179 note stating I would call at 1.30 on important business.

Q. Then you went downstairs?

A. Yes sir.

Q. What did you say to him when you got to the room?

A. I told him, after passing greetings—he asked me if I had any news, and I told him yes, I had written him a very important letter on the 9th of December, and also I had written him two letters previous to that, one on the 30th of October, and one on the 9th—the 14th of November, and asked him if he received them, and he said he did not—well, he had received the two former, and he says Here I am. He said I didn't answer, because I was coming on to Washington soon.

Q. What else did he say?

A. He asked me in reference to this investigation that was going on, and I told him that they were conducting a general investigation of the Land Office. He asked me about a gentleman named Barnes in the Land Office. I told him I didn't know anything about Mr. Barnes, except I had seen him come out of the room of Mr. Burns, who was conducting the investigation.

Q. Who was Mr. Burns?

A. Mr. Burns was special agent of the Treasury Department, who was making this investigation.

Q. For the Interior Department?

A. Yes sir.

180 Q. Go ahead with the conversation?

A. Well, I told him the subject of the important letter that I

had written to him on the 9th of November related to the stenographer with whom I was acquainted, and who had promised to give me the notes of this investigation for $1,000. I told him I thought it was too much; probably $500 was more reasonable, and I communicated this to Benson, and he asked whose names were mentioned. I told him the names which had been mentioned were Mr. F. A. Hyde and Hon. Binger Hermann, Commissioner of the Land Office; I said anyhow his name was mentioned. He said he didn't see why he should pay anything for this information as it related principally to other people. He wanted to know if the matter of the stenographer could not be deferred until he returned to San Francisco. I told him no, I thought it was best to settle it right away. Then he asked me if I couldn't find out what Mr. Barnes had said. It had been reported to him that Barnes had made a clean breast. I told him I didn't know, but I would see him and let him know tomorrow. Mr. Benson said he was going to New York tomorrow and for me to call at 3 o'clock. He asked me how I was off for pictures. I told him pretty scarce at the present time.

He said I think I will have a couple for you tomorrow; I
181 am expecting a letter and I may have some pictures tomorrow. Then we talked in reference to——

Q. What was meant by pictures?

A. That referred to money.

Q. Go ahead?

A. I asked Mr. Benson if he was acquainted with a Mr. Jones, chief of the forest division in the Land Office, and he said no. I asked him if he knew whether he had any transactions with Mr. F. A. Hyde directly or through Mr. Allen, and Mr. Benson said he didn't know, but thought he might have. Then we talked in reference—Mr. Benson said some parties had called on the President, prominent parties had called on the President—in reference to 8000 forest lieu selections and 27000 timber and stone entries that had been suspended by order of the Secretary of the Interior. He said the people were very much dissatisfied and that the persons had called on the President and recited these facts to him, and stated that last year the Land Office had inaugurated 634 prosecutions for frauds against the public lands and only some four convictions, and these parties wanted to know if the President was going to stand for that kind of business. The people were dissatisfied, and he said that Senator Foster and Senator Perkins were also going to call on

the President along these same lines, to see if some action
182 could not be had to relieve this suspension. Mr. Benson told me that a number of forest lieu selections in the name of C. W. Clarke were absolutely perfect, and he was going to have his attorneys, Messrs. Britton & Gray see if those could not be relieved from suspension, and he said that afternoon he was also going to see Commissioner Hermann. I think I asked Mr. Benson if Hermann had anything to do with this lieu land business, and he didn't answer me one way or the other. About that time he

received a notice of a long distance telephone, and went out of the room and down stairs, and when he came back he renewed the conversation with reference to Mr. Hermann, and said if Hermann wanted anything to sustain his character, he had a pile of letters indicating about so high that he had, but from his tone I inferred——

Q. Never mind your inferences; what else did he say?

A. Then he said he was going to see Senator Perkins and Senator Foster along these same lines to see if these forest reserves and lieu selections, and timber and stone entries could not be relieved from suspension; that they might possibly affect political aspects in the States of California and Oregon, and when those parties went to see the President that the President dictated something to his stenographer on the subject, the contents of which Mr. Benson
183 did not know or did not communicate to me.

Q. Did he say why he did not communicate anything to you at any time?

A. No sir.

Q. Go ahead; anything further said?

A. I think not.

Q. Anything said about any further information to be obtained by you?

A. He wanted me to find out further what I could learn from this stenographer as to who the parties were who were making the statements, and I think that ended the conversation on that day. The next day I had a conversation with him.

Q. Was there anything said about your not having furnished him certain other information that you promised?

A. Yes sir; he referred to the fact that there were certain other reports that I had promised to get him that I hadn't done.

Q. What reports were they?

A. That related to the report of Mr. Steece that I had been trying to obtain for him ever since March, and I told Mr. Benson that the man from whom I expected that information had informed one of the investigators that I had asked him for it. Mr. Benson says That left you in a rather bad situation. I said Not necessarily because Mr. Steece was one of my agents, and I thought I ought to have the benefit of his report; wanted to know what it con-
184 tained.

Q. This was the conversation that occurred on the 17th of December, I understand you?

A. I think so; it is hard to distinguish where they ended.

Q. When did you next see Benson?

A. On the 18th, about quarter of three o'clock the following day, in the same room and place, in pursuance of an engagement previously made that I would call on him at that time.

Q. Give us the conversation?

A. He asked me what news I had heard and I told him I had seen the stenographer and the stenographer was not inclined to talk very much, but he intimated the names of certain parties who had

made statements, among them Mr. Barnes, of the Land Office, Mr. Clarke, the clerk in Mr. Hyde's office, a girl by the name of Goldberg, and McKenna, in San Francisco, and a Miss Glover. Mr. Benson then said Miss Glover had never made a statement; that someone had come into his office and tried to get a statement from Miss Glover, and had taken her out, but she had made no statement. I told Mr. Benson that Mr. Slack had made a statement. He said yes, Mr. Slack had made a statement. I told him Mr. Snyder had also made a statement. Mr. Benson said he thought not; the Government had tried to get Snyder to make a state-
185 ment but he had absolutely refused to do so and there must be a mistake about Snyder.

Q. Anything said about the name of Shallington?

A. Yes; Mr. Benson asked me if some person named Shallington, as near as I can remember—I couldn't quite catch the name—had made a statement. I told him that name didn't seem familiar to me, and that I hadn't heard it. He said he didn't know anything anyhow to amount to anything; didn't know anything important anyway.

Q. Go ahead; anything said about Benson being there and being known to the officers?

A. I told Benson that I thought the officials knew he was in town and he was being watched, and I thought there was a gentleman downstairs by the name of Mr. Burns that probably was watching him. He wanted me to describe Burns and I did, and he wanted to know if it wasn't dangerous for me to come up there, and I told him I didn't think so because I was not sure it was Mr. Burns, although he looked very much like him. At that time Mr. Benson asked me if I didn't want to use the water closet.

Mr. PLATT: I am awfully sorry to keep interrupting about this hearing. The witness' voice don't carry very well, and we have great difficulty in hearing him.

A. (Continuing:) I told him I thought I did, and went
186 into the water closet, and I found on the edge of the basin four $50. notes, which I took.

Q. $50. notes or bills?

A. They were Government gold certificates. I took them and put them in my overcoat pocket and came back into the room where Benson was, and he told me that he was going away tomorrow, and I bid him good-bye, shook hands with him, and left.

Q. What did you do with these gold certificates?

A. Well, I put them in my overcoat pocket and went downstairs into the lobby of the hotel—the Willard hotel. There I met Mr. Burns, and we went up to the lobby of the Ebbett house, where Burns introduced me to Mr. Wilkie, chief of the secret service division of the Treasury Department. I turned over those notes at the request of Mr. Burns to Mr. Wilkie, who put his initials on the

back of the bills for identification. I put my initials on the front of the bills, each one of them, opposite the words "Department series."

Q. Did you initial those four $50 bills (producing bills)?

A. Yes sir, opposite the words "Department series." These are the notes and those are my initials.

Q. Those are the ones that you turned over to Mr. Wilkie?

A. Yes sir.

Q. Did Mr. Wilkie initial them in your presence?

187 A. Yes sir, before I initialled them.

Q. Are those the ones on the edge of the back of the bill?

A. Yes sir.

Bills offered in evidence and received as Exhibit 1.

Q. I understood you to say that during all these conversations and all the different dealings that you have testified to, you were in the Government employ in the position you have already stated, chief of the special service division of the Land Office?

A. Yes sir.

(By Mr. CAMPBELL:)

Q. All the time?

A. No, not all the time; down to the 1st of April, 1903.

(By Mr. BALDWIN:)

Q. To the 1st of April, 1903?

A. Yes sir.

Q. And after that until the present time you were in what position?

A. Fourth class clerk in the General Land Office.

Q. You spoke about a letter of November 9th which you referred to in your conversation with Mr. Benson of December 17th, about the stenographer?

A. Yes sir.

Q. How was that letter, or the envelope in which it was contained, addressed?

A. It was addressed the same as the others to John A. Benson, 507 Montgomery street, San Francisco, California.

Q. Placed in a postpaid envelope?

A. Yes sir.

188 Q. Did you place it in the mail yourself?

A. No sir.

Q. In this conversation of December 17th, did he say that he had got it?

A. No sir; it hadn't time to reach him at that time.

Mr. PLATT: Mr. Commissioner, the learned district attorney stated when he started out with this testimony about the transaction in 1897, that he was going to show some sort of a continuous series of transactions. Now as a matter of fact he has testified to some rather

indefinite and entirely unrelated transactions in 1897 between him and Mr. Benson, and then he testified that in 1902, there was some talks about some maps. No transaction about it, but some talk about maps, and that was in May, 1902. Now comes this question that is referred to apparently in the indictment, that is to say about his being bribed to divulge the contents of some report. Now he don't testify to anything of the kind but his transaction in 1903, the testimony evidently is intended to relate to something of the report of Steece and Pugh, but the other things are entirely disconnected and remote transactions, and you stated that the time would come when we could move to strike this out, and we make that motion now to strike out the testimony that the witness has given in
189 regard to the transactions prior to the testimony which he gives in regard to the 1903 transaction referred to in the indictment or in the complaint.

The COMMISSIONER: I will reserve decision. Go ahead. They may connect that hereafter in some evidence. I don't know.

Mr. BALDWIN: For the purpose of showing the relation between the parties and why it is that John A. Benson should select this man Harlan as the person to whom he should address his communications containing the offered money that is mentioned in this indictment, isn't it proper to show the relations between them and how it naturally, without any impediment, and following the channel of least resistance, came up to this particular place, referring to these very lands and the very things in which Benson was interested. Although that was not a part and parcel of the transaction between them that led up to the specific offer of money to induce him to do a thing which it was his duty not to do on a certain date, I think it should be received.

The COMMISSIONER: I am inclined to agree with the district
190 attorney at the present time, and I will give you an exception.

Exception taken.

Cross examination by Mr. CAMPBELL:

Q. Mr. Harlan, how long have you been in the employment of the United States Government?
A. Since December, 1865.
Q. And how old are you please?
A. I will be 58 in April coming.
Q. And when did you first meet Mr. John A. Benson?
A. In the latter part of 1897 or first part of 1898.
Q. Did you live in the District of Columbia, or outside of it?
A. In the District.
Q. At a place called what?
A. Takoma Park, D. C.
Q. How long have you resided there?
A. 22 years coming April.

Q. You say that you first met Mr. Benson in the fall of 1897 or early part of the winter of 1898?

A. Yes sir.

Q. And this conversation which you have narrated took place in Captain Thomas' office?

A. Yes sir.

Q. You were then doing what?

A. I was chief of the special service division of the Land Office.

Q. Was that before or after there had been a forest reserve division created?

191 A. Well, the forestry act was passed on the 4th of June.

Q. There was a forest reserve division created in the Interior Department, was there not?

A. I had charge of the forestry work.

Q. Wasn't there a special division created for it?

A. Not at that time.

Q. That is what I wanted to know; then that was before there was any special division created.

A. Yes.

Q. When was this special division R. created?

A. On the 1st of March, 1901.

Q. Now after division R. was created, what did you do?

A. I *had* still had charge of the special service; special agents of the Land Office.

Q. You had nothing to do with division R.?

A. No sir; that was taken out of my division; they created a new division.

Q. Will you state to the commissioner what portion of the work of the Interior Department was put into division R.?

A. All matters that related to forest reserves and location of them, and withdrawal of lands for it, or the management of them.

Q. And you stated what date that was created?

A. The 1st of March, 1901.

192 Q. And that was created then, and the forest reserve taken out of your division before you had any conversation with Mr. Benson about the exterior boundaries of these forest reserves?

A. No, sir.

Q. Did you not state you had them in March and April 1902?

A. No sir.

Q. When did you first have the one about the exterior boundaries with Mr. Benson?

A. Last part of September, or first of October, 1899.

Q. You stated that was about expediting cases?

A. No sir.

Q. In 1897?

A. That is right.

Q. That there was forest reserves coming in, and that Mr. Benson wanted to know if you could see that his cases were expedited?

A. Yes sir.

Q. You then told him that he would have to see Mr. Valk?
A. That I would have to see Mr. Valk.
Q. You had nothing individually to do with that particular portion of the business in the Land Office?
A. I had charge of it, yes sir, and it was farmed out and Valk he had the immediate work on his desk.
Q. What was the character of that work?

193 A. The character of the work was the examining of the applications that came up for lieu selections based on relinquishments made within the forest reserves of title to the United States.

Q. Now the method of that was a person who desired to select what they called lieu land would make a conveyance to the United States, and would accompany that conveyance with an abstract of the title to the land conveyed?
A. Yes sir.
Q. And the application to have that land which he conveyed to the United States, exchanged for some lands outside of the reservation?
A. Yes sir.
Q. The United States did by its officers then examine that abstract?
A. Yes sir, that is correct.
Q. They examined the abstracts?
A. Yes sir.
Q. And the base?
A. Yes sir.
Q. The abstract was required to show the title?
A. The title of the man who wanted an exchange, yes.
Q. And then when the abstract wa- examined, that was passed up to the Commissioner of the General Land Office for his action?
A. Yes sir, a letter was written describing the tract of land relinquished, and the tract of land that he desired to get in lieu of it.
Q. Did the abstract go to the Commissioner?
A. No sir, nothing but a blank letter on forms.

194 Q. The application for the transfer showed didn't it, simply an offer to transfer, simply saying that I hereby offer or propose to the Government of the United states that I will transfer or trade one certain number of acres within such a forest reservation for a certain number of acres outside of it and open to selection?

A. It was an application for a specific tract of land that the man wanted to take outside, and in the application was specified the base which he proposed to and did relinquish to the United States.

(By Mr. BALDWIN:)

Q. Explain the base?
A. The base was the land owned by private parties within the limit of the forest reservation created under the act of June 4th,

1897. All parties who had the title to land within the reserves could relinquish that land to the United States, and in lieu of it select other lands outside of the reserve of equal acreage.

(By Mr. CAMPBELL:)

Q. That was called the base?

A. Yes sir.

Q. All that accompanied the application on this exchange was the deed of the land, which was the base land, with the abstract of title of all the property which was the base property?

A. Yes sir.

Q. The deed passed to the Government, and when the Government accepted the proposition then they proceeded to patent?

195 A. Yes sir.

Q. Your department held, and the Government held, that the Government was bound by nothing until it accepted the lieu base?

A. Yes sir, I believe that is right.

Q. That is was simply an offer?

A. It was an offer until the acceptance of the base, yes.

Q. You understood when you had your first conversation with Mr. Benson, that by expediting this land was, that it was to be hurried through the Land Office as quickly as possible?

A. Yes sir.

Q. You didn't understand that there was to be anything dishonest done?

A. No sir, nothing at all.

Q. You simply understood that you and Valk were to look after—that is Valk was to look after these matters just in the exact language of expediting, pushing them through as rapidly as possible?

A. That is the idea, sir.

Q. And if there was any defects shown by the abstracts, instead of passing them up to the Commissioner of the General Land Office, inform the applicant or the attorney for the applicant so that those defects might be remedied. For instance, if an abstract showed that there were some taxes unpaid, instead of passing it up to the Commissioner of the Land Office, and having the

196 selection rejected for that reason, the applicant was informed of that, and enabled to make it good?

A. Yes sir; perfect his papers, or to make perfect his claim.

Q. And if for instance there was 640 acres of base, and 40 acres of that base was considered not good by the person who examined the abstract; for instance, if one of Benson's clients made a selection of 640 acres of land in lieu and you found that there was 40 acres of the base which did not pass muster we will say, he was notified and required to furnish new base for it?

A. Yes sir.

Mr. BALDWIN: I object to that unless they first show that this

was within the time in which this particular line of transactions came within his knowledge. On the further ground that he has not testified to anything with reference to Benson's own particular transactions in the office, excepting the general promise on his part to expedite. I suppose he has a right to state the method and order of doing business in the office as he knows it, but he cannot go into these transactions unless he personally knew about Benson's transactions, and whether the abstract was correct or not. There is nothing shown that he had personal knowledge of Benson's
197 particular applications or abstracts.

The COMMISSIONER: I got the impression that he had personal knowledge of it.

Mr. CAMPBELL: Of course, and that is what he and Benson suggested by having Valk do.

The COMMISSIONER: I allow it.

Q. Then as you understood it in this conversation between yourself and Mr. Benson, when you spoke of having Mr. Valk come, you did not understand that there was to be anything dishonest done on the part of either you or Mr. Valk in that practice, did you?

Mr. BALDWIN: I object to it. Give the conversation.

The COMMISSIONER: He has already answered no.

Q. Do you know whether or nay the work, or a good portion of the work that was done in expediting these cases was not done out of office hours?

Mr. BALDWIN: Objected to as incompetent and immaterial.

Mr. CAMPBELL: It is very material. The gentleman says that he proposes to show a connection with this which was a criminal connection or wrong connection. Now if this man had simply
198 been doing things which were necessary, and which they do for every member of Congress; which they do for every Senator; take up an abstract, put it in his pocket, and take it home or go outside, then that explains the first transaction, and shows it to be perfectly innocent and there could be no reason why it should end, as contended by the Government, in the bribery of any person.

Mr. BALDWIN: I should like to suggest we are not trying here the question of whether or not Benson did or did not obtain these lands fraudulently. That is not the question. The substance of the offence here is offering to this man to do or not to do certain things. I state again, as I did at the opening of the case, that the Government contends and intends to prove that this man occupied a position; that in that position something in the ordinary course of business came to him; that an investigation was made concerning a certain transaction of the defendant here in certain lieu lands and base lands in the State of California and Oregon, and that matter was the subject of the investigation, and if it was a subject of investi-

gation it is absolutely immaterial whether the investigation
199 should turn out one way or another afterwards. The thing to be determined is whether an investigation was going on and was money paid to this man to get the information or to do an act which was contrary to his duty.

Mr. CAMPBELL: Why did the counsel for the Government introduce the evidence as to the payment of this money? Now I am explaining the payment of this money which preceded this last money for the purpose of showing that it was an innocent payment.

The COMMISSIONER: I am going to allow you to take it.

Mr. BALDWIN: I object further that it must be hearsay evidence on his part, because he didn't do it.

The COMMISSIONER: Of your own knowledge, of course.

The WITNESS: I have no knowledge on the subject at all.

(By Mr. CAMPBELL:)

Q. You have no knowledge on the subject?

A. No, sir.

Q. You have now given us fully your understanding of the first conversation with Benson, haven't you?

A. Yes sir, I think so.

Q. And as to what it embraced?

A. As near as I can remember, yes sir.

200 Q. When was the second conversation which you had with Benson?

A. It was in the latter part of September or the first part of October, 1899.

Q. 1899?

A. Yes, sir.

Q. That was practically something over a year between the two conversations, one in the latter part of 1897 or early part of 1898?

A. Yes.

Q. And the other was in 1899, the latter part?

A. Yes, sir.

Q. Considerably over a year?

A. Yes, sir.

Q. Now what was the subject of that conversation?

A. Mr. Benson wanted to know if I couldn't furnish him with the lines of proposed forest reserves, or the lines of extensions of existing forest reserves.

Q. Lines of extensions of existing forest reserves?

A. Where they were proposed to be extended.

Q. They were records of the Land Office?

A. Yes, sir.

Q. And what you did was then to take from the records of the Land Office descriptions of these forest reserves and sent them to Benson?

A. Yes, sir.

Q. You did that by sending two maps describing them?

A. Yes, sir.
Q. Did you do that work yourself?
A. Yes, sir.
201 Q. When was that work done?
A. Done during office hours.
Q. And you took a map of California, and you drew on that map the line of this forest reserve which had been created?
A. Which had been proposed for creation.
Q. And sent it to Benson?
A. Yes sir.
Q. And it was a record of the Land Office?
A. Yes sir.
Q. Do you know whether or not at that time or about that time there had been a report made to Congress with the descriptions of these proposed forest reserves?

Mr. BALDWIN: Objected to as immaterial.
Mr. CAMPBELL: I contend it is material in this: If this testimony is of any value at all, it is for the purpose of endeavoring to show that this gentleman surrepti-ously took from the Land Office that which he should not have taken from the Land Office and gave it to Mr. Benson. Now I understand the testimony is that was a record, and he simply copied it from the record, but if it were a record I suppose anybody had a right to get it.
The COMMISSIONER: I don't think it is material. I rule it out.
Exception taken.

Q. Now you say that you sent that to Mr. Benson, the
202 first map, and thereafter you received $100?
A. Yes sir.
Q. What did you understand that $100 was sent for? For your labor in preparing that?

Mr. BALDWIN: Objected to. He stated the conversation, and your honor will have to derive your own conclusions.
The COURT: I would rather have the witness' answer to that.

A. I presume it was for the labor I performed, of course.
Q. You didn't make any demand for $100?
A. No sir.
Q. And if I understand your testimony you said that you thought that labor was worth $100?
A. I don't think I testified to that.
Q. Didn't you?
A. I think not.
Q. Was there anything that passed between you and Benson about that $100?
A. Not that I recall, no sir.
Q. You simply sent him this map and he sent you the $100?
A. Yes sir.

Q. And then you sent him a second map of the forest reserves in Oregon?

A. The Rogue River reserve, yes sir.

Q. And he sent you a second $100?

A. Yes sir.

Q. Well, that Rogue River reserve was a matter of record
203 in the Land Office; in the Interior Department, was it?

A. Why certainly it was.

Q. And you took and gave him a copy of the record in the Interior Department, and sent it to him, and he sent you another $100?

A. Yes sir.

Q. And that is the way you understood it?

A. It was in pursuance of the agreement that I was to be paid for my services.

Q. Certainly; you were to be paid as you understood it, for your services in making these maps, and marking them, and giving him this information from the records of the Land Office?

A. That is right.

Q. You didn't understand that you were doing anything, and he didn't ask you to do anything which was dishonest in that, did he?

Mr. BALDWIN: Objected to.

The COMMISSIONER: Answer it. What I want to get at is was it possible for any one to get in there and make these extracts and get the clerks of the office to make these things, and send them out broadcast to anybody.

A. No, sir; that information was private until after the reserve was created by the proclamation of the President.

204 The COMMISSIONER: If I went to you in the office and asked you to give that, you wouldn't give it?

The WITNESS: No sir.

The COMMISSIONER: It was contrary to the rules of the office, and contrary to the rules——

Mr. PLATT: One moment. Let us find out whether there is a rule.

The COMMISSIONER: It is contrary to the office rules?

Mr. PLATT: We object to that.

The COMMISSIONER: I want to find out whether a man can go into the office and get broadcast anything he wants.

Mr. PLATT: If there are rules, let us have them.

The COMMISSIONER: Yes, that is true. I will find out afterwards.

(By Mr. CAMPBELL:)

Q. You said a few moments ago that was a record of the General Land Office?

A. Yes sir.

Q. And the General Land Office is a public land office of the United States?

A. Yes sir.

Q. And you said you would not have given it to any person, but any one who was interested had a right to examine that proposed forest reservation?

A. Not until after it had been created.

205 Q. Why sir, don't you know as a matter of fact and a part of your office, that in California and in Oregon, before they created those land reserves, the forest reserve people advertised in the papers the proposed line of the reserves and advertised for objections to them. Do you know that of your own knowledge?

The COMMISSIONER: You are asking about California and Oregon.

Mr. PUGH: I want to make a statement——

Mr. PLATT: I object to any statement by this gentleman.

Mr. BALDWIN: I object to this unless this witness knows of his own knowledge, and it was subsequent to the time when Congress had passed this act.

Mr. PUGH: I want to make a suggestion to Mr. Campbell. It is since the forest act of 1897.

Mr. CAMPBELL: Yes, since the forest act of 1897.

Mr. PUGH: Anything before that would not be material here.

Mr. PLATT: The defendant has a right to have his counsel cross examine the witness without this kind of interruptions.

The COMMISSIONER: I want the witness' own knowledge
206 and I am going to confine it to that.

Mr. CAMPBELL: I am asking as a part of the general rules. Your honor allowed them to go on with that before.

The COMMISSIONER: I want his own knowledge on the subject.

Q. Now do you know as a part of your duties when you were in charge as you say prior to the creation of division R., don't you know that the proposed reservations were published in the papers adjacent to the places where they were made?

A. Yes sir.

Mr. BALDWIN: Objected to as immaterial.

Mr. CAMPBELL: Then they could not be secret. The proposition is that the forest people published, and they had a right to go before the Secretary of the Interior and the Commissioner of the General Land Office and object to the lines of the so-called reservation.

The COMMISSIONER: My understanding of this case is simply this. Here is a charge against Mr. Benson of having bribed an officer of the Interior Office. Did he or not do that?

207 Mr. CAMPBELL: You have only stated a part of it; bribed an officer of the Interior Department to do something in violation of his lawful duty. Now if these were published, and they were published records, and the public knew them, then simply giving a map of it was not violating the lawful duties.

Mr. BALDWIN: I have seen transactions before the grand jury published. Would that make it otherwise than private.

The COMMISSIONER: This witness can answer this question of his own knowledge, if he knows it, and then stop at that line, because there is no use of going into so much of it.

A. No sir, not to my knowledge.

Q. Was it not a part of the regulation of the forestry department since the enaction of the forest act of 1897, that the proposed forest reservations that included lands that were owned by outside parties, was published in the newspapers for the purpose of allowing persons to make objections to the Commissioner of the Land Office or Secretary of the Interior, as to the proposed boundaries?

Mr. BALDWIN: Objected to, that such a regulation must be the best evidence.

The COMMISSIONER: I sustain it.

208 Mr. CAMPBELL: I ask him if he doesn't know it as a part of the records of his office?

The WITNESS: No sir.

Mr. CAMPBELL: What does your honor say?

The COMMISSIONER: If there is any such regulation there, and it is published, let's have it.

(By the COMMISSIONER:)

Q. Is this regulation printed, and one of the rules?

A. I don't know whether there is such a rule.

(By Mr. CAMPBELL:)

Q. Was it a practice?

A. I don't remember it was the practice.

Q. Do you remember of its ever being done?

Mr. BALDWIN: I object to that.

The COMMISSIONER: We are getting away outside.

Mr. PLATT: Let us go before the court with this thing now and have it passed on.

Mr. BALDWIN: No, we don't go to the court for anything under this proceeding.

The COMMISSIONER: I am going right on with this examination. Go ahead.

Q. Do you know of it ever having been done?

Mr. BALDWIN: Objected to.

The COMMISSIONER: If he knows it has been done.

209 A. Not officially, no sir, I do not.

Q. How do you know it; do you know it personally?

A. No sir.

Q. Sir?

A. No sir.

Q. How do you know it?
A. I don't know it at all.
Q. What did you mean by saying you didn't know it officially?

Mr. BALDWIN: Objected to.

Mr. CAMPBELL: He said, I don't know officially. Now I ask him how he knows it.

(By the COMMISSIONER:)

Q. Do you know it personally?
A. I don't know it in any shape.

(By Mr. CAMPBELL:)

Q. What did you mean when you said you didn't know it officially?
A. When authorized or paid for by the Government.
Q. Sir?
A. When it was authorized or paid for by the Government; I don't know it in that shape.
Q. Do you know it in any shape?
A. No sir.
Q. Do you know a gentleman by the name of Grant I. Taggart?
A. Yes sir.
Q. Do you know what official position he occupies in California to the Government of the United States in relation to forest reserves?
A. Yes sir.
210 Q. What was it?
A. He was supervisor of the forests in southern California.

(By the COMMISSIONER:)

Q. When?
A. I think he is yet.

(By Mr. CAMPBELL:)

Q. He has been for a number of years?
A. Yes, ever since 1899, anyway.
Q. Will you say as a fact that you did not know that Mr. Taggart advertised the proposed forest reservations in California, and advertised in his official capacity for anyone that had any objections to the lines as laid down, to so inform him?

Mr. BALDWIN: Objected to on the ground it is immaterial and no proper foundation has been laid for that kind of evidence. He is asking for negative evidence from this witness, and also it is incompetent for any purpose, and the form of the question likewise.

Mr. PLATT: The commissioner drew out the fact a moment ago by examination that this knowledge was not available to anybody until the President made a proclaimation. Now isn't it proper to cross examine him to see whether that is so?

Mr. BALDWIN: The moment you offer any evidence about a proclaimation, that is the best evidence. It is immaterial whether he knows about it.

211 Mr. CAMPBELL: It seems very material. It seems to the gentlemen who represents the Government, as my old friend John Sparks, the governor of Nevada says, "It makes a great deal of difference who gores the ox." In proving his case it was all parole testimony as to the duties of these people, and what the general custom of the office was and everything of that kind. Now we are asking this question about something which they say was secret, and we say was not, and the secret of it is the materiality of it.

The COMMISSIONER: I allow the question. Answer it.

Mr. BALDWIN: If there was an advertisement, there must be that advertisement somewhere, and this is secondary evidence. If it is material, which I still insist, even if he knew it, there is a method of proving advertisements and proving books, or the contents of documents. I don't know of any rule of evidence that permits this. The question of what is the practice and rule of the office is one thing, and he is an expert that can testify to that.

The COMMISSIONER: Answer the question.

A. I have no knowledge of it.

Q. Then did you have full knowledge of all the matters

212 that took place in these reservations?

A. I supervised that work in the division.

Q. And are you willing to say as a fact that such publications were not made?

A. I don't remember any such publications.

Q. Will you say they were not; are you willing to say at that time that they were not?

A. I cannot get any closer to it than I have no recollection of it.

Q. Is that the best you can do?

A. Yes sir.

Q. Don't you know as a fact that it was the practice of the office to give notice of the proposed reservation?

A. No sir.

Q. Do you say it was not?

A. No sir.

Q. Now do you say it was not the practice, or you don't know?

A. I don't remember any such practice at all, sir.

Q. As a matter of fact don't you know that in this first map which you sent to Mr. Benson, that the proclaimation had been made before you sent the map?

A. No sir, I don't think it has been made yet.

Q. The first one?

A. What first one do you refer to?

Q. I mean where you say you sent the map of the proposed forest reservation in California?

A. Northern California?

Q. Yes.

A. Yes.

213 Q. You say that has not been made yet?

A. I don't think it has been.

Q. When was it made public, if at all?

A. I don't know; I think the withdrawal has been made, but I don't think there has been any proclamation issued.

Q. What do you mean by the withdrawal?

A. The boundaries established, and the lands withdrawn from entry.

Q. Withdrawn from public entry by the Land Office?

A. Yes, sir.

Q. Was not that made before you sent the map to Benson?

A. No sir, I think not.

Q. And then telegraphed from Washington?

A. Did I telegraph?

Q. Telegraphed by Britton & Gray?

A. I don't know anything about that.

Q. Didn't Mr. Benson tell you in one of these conversations he got this information of this particular thing from Britton & Gray before he got it from you?

A. No sir; he said in relation to the San Francisco Mountain reserve; the Bogue River reservation.

Q. Has the Rogue River proclamation been made yet?

A. I think not.

214 Q. Had the land within the boundaries ever been withdrawn from entry?

A. I don't remember; it hadn't the last I had to do with it.

Q. Just what you did was to furnish to Benson, according to your testimony, a map of certain proposed reservations which have not been made as yet?

A. Yes sir.

Recess until 2 p. m.

After recess.

WOODFORD D. HANLAN—cross examination continued.

By Mr. CAMPBELL:

Q. Now from what data did you compile that map?

A. I compiled it from the working model of the Land Office.

Q. You say they were proposed reservations; what did you mean by that?

A. Why, certain tracts of land are examined in the field by the forestry officers, and they make a report to the Commissioner of the Land Office as to the advisability of including certain described lands within the forest reserve, describing the land by sec-

215 tions, township and ranges, with a view of making a forest reserve out of those lands.

Q. Then it was a map compiled from the reports of the forest rangers, or the forest superintendent, that you furnished?

A. Yes sir.

Q. They had not yet been passed upon by the Commissioner of the General Land Office, or the Secretary of the Interior?

A. They had not become reservations at that time.

Q. They have not as yet become reservations, have they?

A. No sir, not as I know of.

Q. Now can you give us any reason why the proposed reservations such as they were, were a secret of the office?

A. The rules of the office require us to keep those things inviolate until after the proclaimation was issued.

Q. Now is that a fact, that the rules of the office do that?

A. Yes sir.

216 Q. Is it not a fact, Mr. Harlan, that during the time that you were in the Land Office, Congress by a resolution, and about this time, called upon the Commissioner-General of the Land Office to furnish to Congress a list of all the proposed reservations?

A. Yes, sir.

Q. Is it not a fact that in accordance you—your division under your supervision—did furnish to Congress a list of all the proposed reservations?

Objected to as immaterial. Objection overruled.

A. Yes, sir.

Q. And it was about this time?

A. It was a little later.

Q. How much later?

A. Between the last of September *and* the 1st of October, 1899, and May 1st, 1900.

Q. This conversation that you had with Mr. Benson, you say was in September, 1899?

A. September or first part of October.

Q. October, 1899?

A. Yes.

Q. Now, within a very short period of that time these proposed reservations were sent to Congress?

A. Yes, sir.

Q. Did you see the report which went to Congress?

A. It was prepared in my division, yes.

217 Q. The maps of the proposed reservation, were they in that report?

Mr. BALDWIN: Objected to as immaterial. He has stated that there was a certain map or outline of these various lands sent to this man Benson. Now, how is it material what was sent to Congress?

The COMMISSIONER: I suppose they want to show that they might be open and free to the public and that anybody could get them. Go on.

A. I don't think the maps were; the descriptions of the land were.

Q. And are these two proposed reservations — which you sent the maps or information to Mr. Benson, to wit, the one in northern California and the Rogue River reservation in Oregon?

Same objection and ruling.

A. They were, or ought to have been; it was intended to include all.

Q. Then you were mistaken, were you not, when you said a moment ago that these things were to be kept secret in the office until the presidential proclamation?

A. No, sir, I am not mistaken.

Q. You sent them to Congress?

A. Congress calls on the Secretary of the Interior for a
218 great many things we keep secret. It is a matter for the Secretary of the Interior whether he shall divulge them or not. We make our recommendations to the Secretary.

Q. You know as a fact that these matters did become public?

Objected to as incompetent and immaterial.

Objection sustained. Exception.

Mr. PLATT: The question is whether this witness has stated just exactly what was the fact. Just because he has stated in answer to Mr. Baldwin something about it, does not preclude us.

The COMMISSIONER: You have shown it was sent to Congress, and that is a question of argument hereafter.

Q. Now, Mr. Harlan, what was it that was kept secret in the department in relation to these forest reservations?

Mr. BALDWIN: Objected to; if there is anything in writing it would be the best evidence.

The COMMISSIONER: Confine it down to this case.

Q. Now, what was kept secret?

Objected to as incompetent and immaterial.

Objection overruled.

A. All reports of special agents in the field to the Commissioner of the Land Office are kept secret until after the Commis-
219 sioner has made final action on these reports either by adopting them or making a recommendation to the Secretary of the Interior.

Q. Now is it not a fact that prior to the time of making this map the lands within the boundaries of this Rogue River and Northern California reservation had been withdrawn from public entry?

Objected to as immaterial.

Objection overruled.

A. I don't think they were.

Mr. PAGIN: There is no evidence at all about the proposed forest reserves in this indictment and it is immaterial.

Mr. CAMPBELL: Then why did you go into it.

Mr. BALDWIN: You are going outside of it now.

Mr. CAMPBELL: I am doing nothing of the kind.

A. No, sir.

Q. You stated in your examination in chief, Mr. Harlan, that you said you would furnish him, if you could get them, the outlines of these forest reservations in various States?

A. Yes, sir.

Q. Now will you state the entire conversation that took place between you and Mr. Benson at that time, particularly what
220 did Benson say to you as to why he wanted these outlines, as you call them?

A. I don't think he gave any reason why he wanted it. He said he wanted that advance information for his own use; that was the idea. He didn't tell me what use he was going to put it to.

Q. Now you say that you went to see Mr. Benson in the month of June, 1903, at Washington?

A. Yes.

Q. You went after you had been informed by Mr. Valk that Benson was in town?

A. Yes, sir.

Q. Who did you see except Mr. Valk, in relation to this interview with Mr. Benson before you went to see Benson?

A. Mr. Burns.

Q. Where did you see Mr. Burns?

A. I saw him in room 136 of the General Land Office, Washington city.

Q. How long before you went to see Benson?

A. Oh, I don't know; it was only a few minutes, I think.

Q. Was that the first time that you had seen Mr. Burns in connection with this matter?

A. In reference to this particular visit it was.

Q. But in relation to the Benson matter?

A. No; I was called down——

Mr. BALDWIN: You needn't state that. When was it is the question.

221 A. I think it was on the 30th of October when I first saw Burns, 1903.

Q. Did you understand what position Mr. Burns was in and what he had to do with this matter?

A. Yes, sir.

Q. Now will you kindly state who did you talk with about this Benson business prior to coming here as a witness?

Mr. BLADWIN: Give the name only.

Mr. CAMPBELL: Mr. Commissioner, I would like to have the wit-

ness to myself without his being instructed by counsel for the Government. It is not proper in my opinion.

The COMMISSIONER: You are right about that.

A. I talked with Mr. Burns and I talked with Mr. Pugh and I talked in the presence of a stenographer.

Q. Well?

A. Well, that is all.

Q. Is that all?

A. Yes, sir.

Q. Who was the first one you talked to?

A. Mr. Burns.

Q. Did you not talk with Mr. Burns in the presence of anyone else except the stenographer?

A. There might have been other persons in the room when matters were being talked about. I think there was; sometimes the chief clerk in the Land Office was in the room and once Mr. McFall was in the room, a clerk in the Land Office.

222 Q. Did you ever talk to Mr. Burns or anyone else in the presence of the Secretary of the Interior?

A. I talked in the presence of Mr. Pugh, and the Assistant Secretary Mr. Thomas Ryan, and Mr. Burns, and I think there was a stenographer there, but I am not sure; if there was, I didn't know the name.

Q. (Last question read.)

A. I don't know of any one else.

Q. Will you kindly answer that question?

Mr. BALDWIN: He has already answered it perfectly.

Q. (Question read.) You can answer that yes or no.

A. I don't know of any one else; I think there might have been a stenographer there but I am not sure.

Q. Do you know the Secretary of the Interior?

A. Yes, sir.

Q. Did you ever talk to him about the Benson business?

A. I thought I had mentioned his name.

Q. The Secretary of the Interior?

A. Yes, sir.

Q. No, sir, you have not?

A. Well, the Secretary of the Interior, of course, yes.

Q. Did you ever talk to him or to Mr. Burns in his presence; Secretary Hitchcock?

A. Yes, sir.

Q. Now, when did you have that talk with the Secretary of the Interior?

A. I think it was on the 31st of October.

223 Q. How many times did you talk to the Secretary of the Interior or the Assistant Secretary of the Interior?

Mr. BALDWIN: I object to it as immaterial.

Mr. CAMPBELL: It is very material.

The COMMISSIONER: I don't see it. If you want to lay the foundation for contradict- this witness, that is one thing.

Mr. CAMPBELL: In the first place, it is a fair cross-examination to ask with whom the witness has talked about this affair and what he said to them.

Mr. BALDWIN: I say it is not.

Mr. CAMPBELL: I say it is. Now will you kindly keep quiet until I get through? When I am addressing the court, I am entitled to the courtesies of the court without being interrupted. I have the right, for the purpose of testing the witness's memory, for the purpose of asking him did you say so and so to another person. It is legitimate cross-examination always. Then there is another purpose why this is particularly pertinent, if he did have a conversation with the Secretary of the Interior and if what he did after that conversation was under the direction of the Secretary of the Interior, or anyone having authority from the Interior Department.

224 Mr. BALDWIN: I submit the gentleman's first two propositions are sound and the third is not.

The COMMISSIONER: Proceed, gentlemen.

A. I think I had another interview, but my memory is indistinct on that score.

Q. Well, think.

A. Well, I cannot fix it but my impression is that I had two interviews.

Q. How long before you went to see Mr. Benson at the Willard hotel did you have an interview with the Secretary of the Interior?

A. I went to see Mr. Benson after I had had an interview with the Secretary of the Interior.

Q. I mean now how long had it been since you had seen the Secretary of the Interior; one day, two days, three days, or the same day?

A. I think I saw the Secretary on the 31st of October and I did not see Mr. Benson until the 17th of December.

Q. Now, between those two times had you seen the Secretary of the Interior again?

A. My impression is that I did, but I cannot recall the fact.

Q. Now, at the time of the interview with the Secretary of the Interior, did you converse with him about the Benson business?

A. Yes, sir.

Q. Did you at that time tell the Secretary of the Interior or were you directed by him to do anything in relation to the Benson

225 business?

Objected to as immaterial.

The COMMISSIONER: I don't see how it is material.

Mr. BALDWIN: I withdraw the objection. Let him answer.

Q. (Question read)?

A. No, sir, I was not directed.

Q. Were you directed by the Secretary of the Interior to follow the advice of anyone?

A. No, sir.

Q. What did you say to the Secretary of the Interior?

Mr. BALDWIN: I object, as incompetent and immaterial.

The COMMISSIONER: I sustain the objection.

Mr. CAMPBELL: I have not finished the question yet.

Q. (continued). In relation to the Benson business?

Same objection. Objection sustained. Exception.

Mr. CAMPBELL: Suppose he states it differently from what he does here?

Mr. BALDWIN: That is a different proposition.

Mr. PLATT: The question is, what did he say to the Secretary of the Interior about this business. Haven't we a right to ask him what he told somebody else?

Mr. BALDWIN: I object to it.

Mr. PLATT: Object to my stating it to the commis-
226 sioner?

Mr. BALDWIN: No, but on the ground that is not the way to impeach the witness or test his memory. If it is offered for the purpose of impeaching the witness, that is an improper way to do it.

Mr. PLATT: The witness has stated certain acts and transactions that he said he had with Benson. Now, it seems to me that is quite legitimate for counsel for Benson, in cross-examining him to ask him what he has stated to other people about these same transactions and what he did in regard to them. You draw the limits of cross-examination too fine. You want to find this all out, I assume. Now let's find out how correct he is, and how credible he is, because if he states that he said something to the Secretary of the Interior about this thing, we may desire the Secretary of the Interior to testify on the subject. He certainly can be examined as to what statements he has made to Burns and to other people, and it does not make any difference whether it is the Secretary of the Interior or President of the United States, or the humblest man in the country, we have a right to test his statements by asking him what he said in regard to these same matters to other people.

The COMMISSIONER: You would have to ask him before
227 you can call a witness to contradict him.

Mr. PLATT: That is what we are doing.

Mr. BALDWIN: There are two cases in this court, in the Raynor case and the other in the Goldwasser case before Judge Holt, and the question was where the witness was asked, in the Raynor case, what did you say before the Commissioner in the remission proceedings, which was objected to, and the court sustained the objection on the ground that they should ask Did you or did you not testify so and so; but this is not the proper way.

Mr. CAMPBELL: That is not the proposition at all. This witness has testified to a number of conversations, from 1897 down, with Benson. Now haven't we a right to ask him what did you say in relation to the same matter to someone else in relation to this proposition for the purpose of determining whether or no he can remember. Suppose he says I can't remember, as he says now in relation to the Secretary of the Interior. Haven't we a right to compare that if he says he had conversations with different persons, the Secretary of the Interior and the other people, What did you say to them; and suppose he says, "I can't remember," or suppose he gives an entirely different narration of the facts—I say we have that right. Of course if you want to put the im-
228 peaching question to him, you must ask him Did you say so and so, naming the time and place and persons present; but that is not the question. It is a well settled principle of evidence that if you ask a man Did you testify so and so, if it is a part of the record, you must show it to him. That comes within an entirely different rule of evidence, but this rule of evidence, asking a person what they said about the same subject matter to various other persons is one *in* which *a* quite a limited experience I have never yet heard contradicted until today.

Mr. BALDWIN: It is objectionable on the further ground that it is not at all pertinent to any question asked on the direct. It is collateral, and he is precluded by the answer.

The COMMISSIONER: I will sustain the objection for the present and look it up afterwards.

Exception taken.

Q. Did you tell the Secretary of the Interior about the conversation that you had with Mr. Benson in Capt. Thomas's office?

Objected to as immaterial.

Objection overruled.

A. Yes, sir, I think I did.

229 Q. Now will you state what you told him took place in Capt. Thomas's office?

Objected to as incompetent and immaterial, no proper foundation laid, and collateral, and defendants are concluded by it.

Mr. CAMPBELL: We have said all we want to say on that subject. It is admissible under every rule of evidence known to me.

The COMMISSIONER: I allow it.

A. I told him of the arrangement that existed between Mr. Benson and myself.

Q. That is not the question. What did you say to him and what did he say to you?

Mr. BALDWIN: What he said to him cannot be competent.

The COMMISSIONER: No, that cannot be competent.

A. I told him, the Secretary of the Interior, that I had met Benson in Capt. Thomas's office in '97 or '98, and that I had made an arrangement with him whereby I was to expedite his forest lieu selections and that he would have to see Mr. Valk in reference to the transaction. I told him of having received money of Mr. Benson in pursuance of that arrangement, and of giving a portion of it to Mr. Volk. I think that is about all I told him.

230 Q. Did you tell him that in the first conversation or in the second?

A. I told him in the first conversation.

Q. Now, what did you tell him in the second conversation?

Objected to as incompetent.

The COMMISSIONER: I can't see the competency of that; you are getting off. I sustain the objection and give you an exception.

Q. You stated that you wrote a letter to Mr. Benson in November, 1903. Will you kindly state the dates of the letters which you wrote to Mr. Benson in November and December?

A. The letter written in November was on the 14th, I think, and the letter in December was on the 9th.

Q. How do you fix the dates?

A. By remembering them.

Q. What is there to make you remember those dates?

A. Well, they were very peculiar epochs in my life; something unusual to me, and I remember them from that cause.

Q. What were they?

A. The fact that I was under these conditions.

Q. Under what conditions?

A. Under the conditions of being questioned about this transaction.

Q. Were they the particular days upon which you were questioned?

A. They were two of the days, yes, sir.

231 Q. You had been questioned on those particular days?

A. Yes, sir.

Q. Did you send those letters under the direction of any person?

A. I sent them under the direction of Mr. Burns.

Q. Those are the letters which you related the contents of this morning?

Mr. BALDWIN: I think I didn't offer those contents because he testified that they had not arrived at the time Be-son came here, but I am willing to let them come in.

Mr. CAMPBELL: I think he said what the contents of them were.

Mr. BALDWIN: The October and November letters?

Mr. CAMPBELL: I am speaking about the November letter, and he said Benson said he got it.

Q. Now, what was the contents of the November letter?

A. Well, it was substantially this: that notwithstanding all the

clamor and rumors in the newspapers the investigators are finding out nothing against you; the information is generally against Mr. Hyde and Hermann.

Q. Who directed you to write that letter; you say Mr. Burns?

A. Yes, sir.

Q. Was that a fact or falsehood?

A. Well, it was principally a fact.

232 Q. It was a fact?

A. Yes, sir.

Q. That they were finding out nothing against Benson?

A. That they were finding out more against Hyde; the statements being made were more against Hyde and Hermann than Benson.

Q. You stated a moment ago, in giving the contents of the letter that you wrote to him, that notwithstanding the newspaper rumors that the investigators were finding out nothing against him?

A. I think that was the purport of it.

Q. You say that was a fact?

Mr. BALDWIN: I object to that because the report itself would show what that was, and he hasn't testified he had seen it, and it would be hearsay evidence, and it is incompetent anyhow.

Objection overruled.

A. Not wholly a fact, no, sir.

Q. Notwithstanding the fact that you wrote that letter to Mr. Benson, you had been before the Commissioner—the Secretary of the Interior—you had been before Mr. Burns and you had told him everything that you have here testified to?

A. No, sir, not all that I have testified to.

Q. You hadn't told them all?

A. No, sir.

Q. You had told the Secretary of the Interior about your

233 dealings with Benson and receiving money from him?

A. Yes, sir.

Q. And you had told that to Mr. Burns?

A. Yes.

Q. And you understood that Mr. Burns was one of the investigators?

A. Yes.

Q. And you told him then that they had found out nothing against him?

A. That was on the 9th of November, yes, sir.

Q. On the 9th of November when you wrote that letter to him?

A. Yes, sir.

Q. And you knew as a fact that they had found out then whatever knowledge you had in relation to Benson?

A. Yes, sir.

Q. Now, why did you write to Benson that which was not true to your own knowledge?

Objected to as collateral and incompetent.
Objection overruled.
The COMMISSIONER: The defense is bound by the answer.
Mr. CAMPBELL: No, I am not bound by it.

A. I wanted to get some information from Mr. Benson.
Q. What information?
A. Whatever that letter would produce.
Q. You didn't ask any information by the letter, did you?
A. I expected a reply to it.
234 Q. You simply told him that there had been nothing found out against him; is that the fact?
A. That is the fact.
Q. What is the information you called for in that letter?
A. I called for a reply, whatever that reply would bring forth.
Q. Whatever the reply would bring forth?
A. Yes, sir.
Q. You didn't know what that would be?
A. Why, of course not, no, sir.
Q. Is that all that you put in the letter?
A. That is all I remember of, yes.
Q. And that was to the effect that notwithstanding the newspaper clamors that the investigators has found out nothing against him?

The COMMISSIONER: He has already answered that.

Q. Did you ask for any money in that letter?
A. No, sir, I think not.
Q. Did you ask for any money in the letter of October?
A. I think I did.
Q. Was that letter written at the instigation of any person?
A. No, sir; I wrote that of my own option.
Q. Now, what did you put in the letter?

Mr. BALDWIN: Now, I object, because he said that the letter was written and mailed, although he didn't mail it. If the letter
235 is here, let us have the letter and see if it is competent first.

The COMMISSIONER: Have you got the letter.
Mr. CAMPBELL: He has testified Mr. Benson said he didn't receive it. I rest on my question for the present time for the purpose of testing the witness's recollection. You have a right to question him about such matters for the purpose of testing his recollection.
The COMMISSIONER: You could as far as having sent it but you can't go into the contents of it.
Mr. CAMPBELL: Why not?
The COMMISSIONER: I don't think the Government went into the contents of it.
Mr. CAMPBELL: I am not bound to ask the same questions the Government does. The Government proved he did send these letters and that Benson said he didn't receive them.

Mr. BALDWIN: What is the purpose of introducing them at all, except to contradict him, and that would be by the letter itself.

Mr. CAMPBELL Suppose he says he can't remember what he wrote in the letter? We can't assume that he will answer.

Mr. BALDWIN: He can answer the question whether he sent it, but I object to it as incompetent and immaterial and not proper foundation laid.

236 The COMMISSIONER: I will sustain the objection. You can ask him whether he remembers the contents of it, or something like that.

Q. Do you remember the contents of that December letter?

A. Yes, sir, I remember it.

Q. Will you kindly state what it was?

Objected to. Objection overruled.

A. I told him that I was acquainted with the stenographer conducting this investigation, and that he wanted to make something out of it if there was anything in it, and he wanted a thousand dollars, or he would read the notes to me for five hundred dollars. I told him I thought that was too much.

Q. Now, under whose instigation or direction did you write that letter?

A. Mr. Burns.

Q. Not having received an answer to that November letter, you wrote another one?

A. Yes, sir.

Q. And did you get an answer to that one?

A. I never did.

Q. Did you see Mr. Benson in relation to it?

A. I saw him on the 17th of December.

Q. In the month of December and immediately prior to writing this second letter to Mr. Benson, did you not have an interview with the Secretary of the Interior?

237 A. Not immediately, no, sir.

Q. Well, did you within a reasonable time before that?

A. Not that I can recall, no, sir.

Q. Well, now, how does it come then that you can recall the conversations that you had with Mr. Benson but you can't recall all the conversations you had with the Secretary which was of more recent date than those which you had with Benson?

A. I don't know; I can't explain that.

Q. You can't explain that?

A. No, sir.

Q. The matters that you conferred with the Secretary of the Interior about were of vital importance to you, were they not?

A. Yes, sir.

Q. You were doing this matter to retain your position in the department?

A. No, sir.

Q. Why, were you doing it then?
A. Why, I had——

Mr. BALDWIN: I think that is immaterial.

The COMMISSIONER: I think we are getting outside.

Mr. CAMPBELL: What? What induced the man to go and tell things which he had done, which they claimed were a crime? Cannot you go into it, particularly as, if this be a crime, he is *particeps criminis* in it. Can't you prove by him, to test the weight of his testimony, whether or nay inducements had been offered to
238 him; whether money had been offered to him; whether an immunity from punishment has been offered to him; whether the position he holds has been offered to him?

The COMMISSIONER: That is another question.

Mr. CAMPBELL: That is the point; why did he do it?

Mr. PLATT: One suggestion. Here is this witness, notwithstanding that months ago he gave all his information to the Secretary of the Interior, still an employee of the Interior Department and appearing here as a witness and evidently under certain strong motives. Now, there ought to be no limit whatsoever to his cross-examination. If there ever was a case where the cross-examination should be to the bottom, it ought to be right here, because this man is coming here swearing away the liberty of a citizen after having talked with all these special agents and with the Secretary and having confessed to them this confession that he has made here, and still holding his position. Now there ought not to be any restrictions on cross-examination under such circumstances as that. It is not fair to the defendant. There ought not to be such restrictions in any case, but here, if there ever was a case of cross-examination where he sits here with the people that are controlling him and looking right over him, they ought not to be allowed to open their mouths. We ought to have the fullest liberty.

239 Mr. BALDWIN: You will appreciate the distinction between this question and one that might be asked. The question is, Why did he go to the Commissioner? I asked him no question about anything he said to the Secretary of the Interior or the Commissioner. If they ask him why he took the stand to testify as a witness and whether any inducements or protection is offered to him, that is a question that goes to the credibility of the witness.

Mr. PLATT: We do not desire to have that question asked in that way. We might as well have the questions asked by the district attorney.

The COMMISSIONER: Go on and answer the question.

Q. (Question read?)
A. I wanted to free my mind and conscience on this matter.
Q. Had you gone to the Secretary of the Interior before you had talked with the secret service agents?
A. No, sir.

Q. Had not the secret service agent asked you to make a statement before you went to the Secretary?
A. Yes, sir.
Q. Had you made that statement?
A. No, sir.
Q. You made it in the presence of the Secretary for the first time?
A. Yes, sir.
Q. Did you write the letters to Benson because you wanted to free your mind and your conscience?
240 A. I wanted to help the Government make a case, yes.
Q. You wanted to help the Government make a case?
A. Yes, sir.
Q. That was your object in doing it?
A. Yes, sir.
Q. Did you agree with any officers of the Interior Department to help the Government make a case?
A. No, sir.
Q. Did you tell the Secretary of the Interior what you would do?
A. No, sir.
Q. Then he suggested to you to help the Government make a case?
A. It was suggested to myself.
Q. You suggested it to yourself?
A. Yes, sir.
Q. When you wrote this letter stating about the stenographer, had you seen the stenographer?
A. No, sir.
Q. Did you intend to furnish the stenographer's notes for any consideration?
A. That was the proposition.
Q. You intended to do that?
A. No, sir, I did not do that.
Q. Then you wrote to Mr. Benson that which was not true, did you not, to help the Government make a case?
A. Yes, sir.
Q. And did you do that to free your mind and conscience?
A. Yes, sir.
Q. Did you think it necessary that you should punish some person in order that you should free your mind and conscience?
241 A. I felt better, yes, sir.
Q. And you are now upon the witness stand for the purpose of helping the Government to make a case?
A. I am testifying to the facts, yes, sir.
Q. Answer the question.

Objected to, that it is already answered.

Q. You have the same desire now that you had when you wrote the letters?

Objected to as immaterial.

Mr. CAMPBELL: When he says he wanted to help the Government make a case he says he wrote these letters to help the Government.

The WITNESS: I am here to testify to the truth.

Q. For what purpose?

Objected to.

The COMMISSIONER: He has stated, to free his mind. I sustain the objection

Exception taken.

Q. When you called on Mr. Benson in the hotel on the 17th of December or in the month of December, 1903, did you go there to help the Government to make a case?

A. Yes, sir.

Q. Under whose instructions?

A. Mr. Burns's.

242 Q. You took the money for the purpose of helping the Government make a case?

A. Yes, sir.

Q. And you had not in your power—you had not the stenographer's report?

A. No, sir; I didn't have it.

Q. You had no intention of furnishing the stenographer's report?

A. No, sir.

Q. You couldn't get the stenographer's report if you wanted to, unless you stole it, could you?

A. I presume not.

Q. And you were not in position to get it at all in the ordinary course of your duty?

A. No, sir.

Q. Now, when you went there and asked Mr. Benson in relation to the stenographer's report, didn't he say to you that he didn't want it?

A. Yes, sir.

Q. Didn't he say to you that he didn't need it?

A. He said he didn't see why he should pay money out when he wasn't interested, for others.

Q. Didn't he tell you also that all that had been found out, or alleged to have been found out by the secret service agents, had been published in the press in the West?

A. No, sir.

Q. Didn't he say anything to you about that?

A. No, sir.

Q. But he did refuse your proposition there to furnish the stenographer's notes for himself?

A. He declined it, yes.

243 Q. And he never did renew it?
A. No, sir.
Q. Then he didn't give you any money on December 17th to furnish him any report of the secret service agents, did he?

Mr. BALDWIN: Objected to as incompetent; that he should state what was said and not give conclusions.

The COMMISSIONER: Tell us what took place.

Mr. PLATT: Does your honor exclude that question?

The COMMISSIONER: No, I don't exclude it. It is a conclusion all the same. He has told us exactly what took place at that transaction.

Mr. PLATT: He is not limited as to stating a conclusion on cross-examination.

Mr. BALDWIN: I object to that further that this man cannot possibly know what Benson had on his mind other than we can if he has stated all the conversation that took place, and it ought not to be upon the record what he thought Benson thought he was giving money for. The question here is, Was the money given, and the facts surrounding the giving out of the money.

Mr. PLATT: Now, Mr. Baldwin, you are district attorney and in a semi-judicial position. You don't want to do this thing you are doing, but let this man go on.

The COMMISSIONER: Let him go on.

244 Q. (Question read?)
A. I don't know what he gave me the money for.
Q. You didn't have any idea?
A. No, sir.
Q. He had refused the report?
A. He had refused the one thousand dollar business, yes, sir.
Q. He had refused the five hundred dollars?
A. Yes, sir.
Q. And said he wouldn't pay any money for the report?
A. He said he didn't see why he should pay out money for others.
Q. Now didn't you tell him that you had been derated in the Land Office; had been put back to a fourth class clerk, or something of that kind?
A. I don't remember whether I did or not; probably I did.
Q. Didn't you tell him you were in need of money?
A. No, sir.
Q. Didn't you tell him that you thought he ought to give you some money for what you had done for him in the past?
A. No, sir.
Q. Who suggested the money, you or he?
A. He sugg-sted the money the day before when I told him I would see Mr. Barnes to get such information as I could from him and get the names of those that had made statements. I gave

him the names of those that had made statements, and he
245 said he would have some pictures for me tomorrow, and to call at three o'clock. I called at three o'clock, or a quarter past three, and he asked me if I didn't want to go to the water closet and I told him I thought I did. I went into the water closet and on the basin I found four fifty-dollar gold certificates which I took and put in my pocket.

Q. Now, between the time that you saw Benson first and the time when you saw him the second time, did you report to any officer of the Interior Department what had taken place?

A. I reported to Mr. Burns, yes, sir.

Q. Mr. Burns was the acting secret service agent of the Interior Department at that time?

A. Yes.

Q. Did Mr. Burns tell you what to do?

A. No; I says, Suppose Mr. Benson offers me money what shall I do——

Mr. BALDWIN: I object to any conversation between himself and Burns as hearsay.

The COMMISSIONER: That won't do.

Mr. PLATT: Hearsay against whom? They might plead that. We are cross-examining. We don't ask to have it ruled out on the ground it is hearsay.

Objection overruled.

A. I asked Mr. Burns if he offered me money what I should do, and he said Take it, and I took it.

246 Q. Didn't you go there for the purpose of getting the money?

A. I went there to see what Benson would do in reference to the stenographer.

Q. Didn't you go there for the purpose of getting the money?

A. No, sir.

Q. He told you to come back and he would have some pictures for you?

A. That is the second day.

Q. Didn't you go there the second day for the purpose of getting the money?

A. Yes, sir.

Q. Didn't you go there for the purpose of trying to get him to entrap the stenographer?

Objected to. Objection sustained.

Exception.

Q. Didn't you go there for the purpose of endeavoring to get him to offer you some money for these stenographer's notes?

A. Yes, sir, that was the object.

Q. Didn't you go there under the instructions of Burns, the secret service agent of the Interior Department?

A. Yes, sir.

Q. And didn't you go there for the purpose of endeavoring to help the Government make a case against Benson?

Objected to as already answered in the affirmative.

247 Q. When did you have your second talk with the Secretary of the Interior?

A. I don't remember; it was shortly after the first; I don't remember what date.

Q. Now, have you told the Secretary of the Interior, or his Assistant Secretary Ryan, or any person, what you did in relation to this Benson business in the Willard hotel at Washington?

A. No, sir.

Q. Whom have you told about it, save Mr. Burns and Mr. Wilkie?

A. No one.

Q. Those are the only two persons?

A. Yes, sir.

Q. You have talked to them as officers of the Interior Department?

A. Yes, sir as representing the Interior Department.

Q. You took the money back and gave it to Mr. Wilkie?

A. Yes, sir.

Q. Now, Mr. Harlan, you stated that you told Benson the names of certain persons that had been before this investigating committee?

A. Yes, sir.

Q. Where did you get that information?

Mr. BALDWIN: Objected to as immaterial. He may state what the conversation was but where he got it is immaterial. It might be a question of public policy which ought not to be disclosed. Anyhow it is immaterial.

248 Mr. CAMPBELL: Suppose it wasn't true what he told Mr. Benson?

The COMMISSIONER: If the giving of these names would interfere with the due administration of justice, I wouldn't allow it.

Mr. BALDWIN: I do not put it on that ground.

The COMMISSIONER: Allow him to state it.

A. I got them from Burns.

Q. Did he tell you to tell Benson those names?

A. He either told me or I asked him the names of anybody so that I could mention them.

Q. You told him that Benson had asked you who had been before the investigating committee, and you asked him who you should tell him, didn't you?

A. I think so.

Q. Did you know that these people had been there other than from what Burns told you?

Objected to as immaterial.

Objection sustained.

Mr. CAMPBELL: This man is under oath, testifying to a certain state of facts, and isn't it always permissible to cross-examine him about it. Suppose he states that which he does not know to be true.

249 The COMMISSIONER: He says he got his information from this clerk.

Mr. CAMPBELL: I asked him if he knew of his own knowledge.

The COMMISSIONER: Do you know of your own knowledge?

The WITNESS: I knew of one man, Mr. Barnes; that was all.

Q. How did you know Mr. Barnes?

A. I saw him coming out of the investigating room as I came in.

Q. He came out as you were going in?

A. Yes, sir.

Q. Then it is the fact that you did not get the information which you gave to Benson on this subject in December from any of the secret archives of the Government?

A. No, sir.

Q. Nor you didn't get it from any reports that were made?

A. I got it from Mr. Burns direct.

Q. That direction and instruction to tell Benson?

A. Well, I don't know whether I had any instructions or not. I asked him the names of those parties so I could mention them.

Q. You told him Benson had asked you?

A. Yes, sir.

Q. And you asked him who you should tell him?

A. Yes, sir.

Q. And he told you?

A. Yes, sir.

Q. And you told Benson just what he told you?

A. As near as I could remember, yes.

250 Q. Now do you mean to say that you don't know what Benson gave you that two hundred dollars for?

Objected to as already asked.

Objection overruled.

A. No, I don't know the specific reason why he gave me that money.

Q. Then you are not able to swear that he did give it to you or any information which you gave him relative to any investigation being made about Benson?

Mr. BALDWIN: Objected to.

The COMMISSIONER: That is a conclusion of the witness. I sustain it.

Q. Did Mr. Benson in any conversation that you had with him at the hotel in Washington, say that he gave it to you for any purpose, or any information which you had given him of reports made by secret service agents?

A. No, sir.

Q. And you didn't ask him for it for that purpose?

A. I didn't ask him for it at all.

Q. These reservations that were made, they were all under the same rule or regulation of the department, were they?

A. Well, I don't exactly understand what you mean.

Q. You say that it was a rule that you should keep everything until the proclamation was made?

251 A. Yes, that is the rule of the office.

Q. Was that the same rule about the Mountain Forest reservation?

A. San Francisco?

Q. Yes?

A. It applied to all, yes.

Q. You say when you told Benson that he told you he had already got the information from Britton & Gray?

A. Yes, sir.

Q. Did you tell him as soon as you ascertained the fact?

A. I don't know what your question points to. Tell who?

Q. Tell Benson?

A. Tell what?

Q. As soon as you ascertained the facts in relation to the San Francisco Mountain reservation?

A. I wrote to him and he came on to Washington for that purpose.

Q. And he told you that he already had that information before he got it from you?

A. After I had told him the information, yes, sir; he said I was too late; he had already ascertained it from his attorneys, Britton & Gray.

Q. Can you tell me when that was? About the date of it?

A. I think it was about the 28th of May, 1902.

Q. 1902?

A. Yes, sir.

Q. You say that you learned of this investigation first in January, 1903, the investigation of Benson and the land matters in California and Oregon?

A. I learned that Mr. Pugh and Mr. Steece were making the investigation at that time.

252 Q. Had you known of any investigation prior to that time?

A. I knew that something was going on prior to that time, but no investigation.

Q. In speaking of what took place in December, I confine myself particularly to the stenographer's report. You had not at that time any access to any reports made by any special agents in the usual course of the business, did you?

A. No, sir.

Q. And you didn't offer him any special agent's report; in other words, just what you stated took place in December in the hotel room, did take place and nothing more?

A. That is all I remember of?

Q. There wasn't anything about any special agent's report?

A. There was something said about a special agent's report of Mr. Pugh or Mr. Steece; Mr. Benson said I promised him certain reports which he had not received.

Q. He didn't get them?

A. No, sir.

Q. You never furnished him any special agent's reports in your life did you?

A. I furnished him data from reports.

Q. You didn't furnish him the report of any special agents, did you?

A. No, sir.

Q. You furnished him, as you say, some information you
253 obtained from the report?

A. Yes, sir.

Q. Now, was that the information you wrote to him about in March?

A. Information I wrote to him about in March was with reference to Mr. Pugh and Mr. Steece's report which I was endeavoring to get.

Q. And which you did not get?

A. Which I did not get.

Q. And he never had asked you to get it?

A. Well, he told me to keep on the lookout and I told him that I would see and make a report.

Q. He told you to keep him advised of anything he was interested in?

A. Yes, sir.

Q. And that is what he told you?

A. Yes.

Q. And that was all he told you?

A. He was very anxious about those reports.

Q. I am not asking you that. He told you to keep him advised about anything that he was interested in?

A. Well, I don't know about that.

Q. Didn't you so testify?

A. I testified that that was his object in 1899.

Q. Now kindly tell me any talk that took place, or of any letter that you ever got from Benson where he asked you to give him the report of a single secret service officer?

A. He wrote to me in reference to this report of Pugh and
254 Steece to give him advice on the matters as it progressed, and I told him that I would try and get the report, and that I was endeavoring to get the report from Mr. Steece.

Q. But you didn't get it?

A. I didn't get any report.

Q. And that letter was when?

A. Early in March.

Q. You were taken out of that department in April?
A. Yes.
Q. And you hadn't any access to any report after April in the ordinary course of business?
A. No, sir.
Q. Then if you had gotten him any report after that time, you would have to steal it?
A. I expected to get it from Mr. Steece.
Q. You expected to have hired Mr. Steece to give it to you?
A. Yes, sir.
Q. That would have been outside of your duty as a clerk; fourth class clerk in the Land Office, wouldn't it?
A. Yes, sir.
Q. Then at the time you got this two and two and one hundred dollars, you hadn't furnished him any report?
A. I had furnished him the proceedings as far as they had gone.
Q. You wrote to him that these two men had gone and seen Snyder?
A. I wrote to him that they had gone and seen him and that they were in Washington getting ready to submit their
255 report.
Q. And if you got a copy of it, you would send it to him?
A. That I would try and get a copy of it, and told him that work I thought was worth five or six hundred dollars, and in pursuance of that he sent it to me.
Q. Sent you that?
A. Yes, sir.
Q. You didn't give him the report?
A. No, sir.
Q. You didn't have the report?
A. No, sir,
Q. You didn't know that you ever would get it?
A. I did not know whether I would or not; I was at work to get it as hard as a man could.
Q. But if you did get it you would have to do it by hiring Steece to get you a copy of it?
A. I expected to get it through personal friendship from Steece.
Q. But you didn't know whether you would or not?
A. I had no positive assurance that I would get it.
Q. Now do I understand you that you say the information which you gave him the letter was worth five hundred dollars, or the report when you got it, would be worth five hundred dollars?
A. I said that what I had done I thought was worth five hundred dollars.
Q. That is writing him the information in relation to Snyder and Slack?
A. In trying to get the report.
256 Q. In trying to get it?
A. Yes; taking the chances that I did as the result of the service.

Q. Now, Mr. Harlan, what did the Government of the United States, through its officers, state to you as to any immunity from punishment in relation to anything that you did as a clerk?

Mr. BALDWIN: Unless the promise was made by some person having authority to make it, I object to it.

The COMMISSIONER: If there has been any promise held out to him——

Mr. CAMPBELL: I don't want your honor to put my questions.

The COMMISSIONER: I allow it.

A. They stated nothing; offered no inducement.

Q. Not a cent?

A. No, sir.

Q. You don't know but what you may be——

A. I may be dismissed any day for it.

Q. I am not asking you about dismissal. I am talking about prosecution criminally?

A. I don't know anything about what they are going to do with me at all, sir.

Q. You don't know and you have had not a word?

A. Not a syllable.

257 Q. Have you had any conversation with them that they could not offer you any inducement now until after you testified?

A. No, sir.

Q. Who have you been talking with; have you had any talk with any person at all, a single soul, in relation to the fact as to whether or not you should be prosecuted?

A. I asked the Secretary of the Interior what he proposed to do with me and he would not answer yes or no; never made any promise one way or the other.

Q. When did you ask the Secretary of the Interior what he proposed to do with you?

A. The first time I saw him.

Q. Then I understand you to say that this testimony that you are giving now and that you have been giving here of your connection with this matter is all voluntary, without knowing whether you are testifying against yourself or not?

A. Without a hope sir.

Q. Without a hope?

A. Yes.

Q. A hope of what?

A. A hope of immunity.

Q. You expect then to be prosecuted?

A. I don't know anything about it; I have no expectation on that.

Q. Now at the time that you wrote to Benson about the investigation made by Pugh and Steece, had that report been made?

A. No, sir.

Q. And you didn't know what the report would be?
258 A. No, sir, I didn't.
Q. Had the report been made in March when you received the money?
A. Not that I know of.
Q. And do you know, as a matter of fact, that the report ever has been made?
A. No, sir, I do not.
Q. You didn't know on December 1st, 1903, whether such a report had been made?
A. No, sir, not positively.
Q. In this conversation which you had in December with Mr. Benson, you say that he told you that the cases that he had there were absolutely perfect?
A. The C. W. Clark cases.
Q. Did you know of your own knowledge what cases Mr. Benson had pending before the department?
A. No, sir.
Q. What were your duties after you were removed from the chief of the special service department?
A. My duties were to examine contests, cases between individuals.
Q. And pass them up to the Commissioner General of the Land Office for his decision?
A. Write decisions for the Commissioner, yes, sir.
Q. That is, you prepared the letters and if he acquiesced in them, he signed them, and if he didn't he didn't?
A. Yes, sir.
Q. Now, when was it that this conversation with Benson occurred about people going to see the President; what time was
259 that?
A. That was on the first interview on December 17th, 1903.
Q. Didn't Mr. Benson tell you that he was there for the purpose of pushing his cases that had been hung up before the department?
A. He said he intended to have his attorneys, Britton & Gray, look after his cases.
Q. That is cases of Clark among others?
A. Yes; he specified C. W. Clark; I don't know whether he mantioned any others or not.
Q. Now, you stated in your examination in chief that on the second time when you went back to see Benson you told him "I saw the stenographer and he is not inclined to talk"?
A. Yes, sir.
Q. And was that a fact?
A. I did see him and he was not inclined to talk, no, sir.
Q. When did you see him?
A. I saw him the next morning.
Q. After you had seen Benson?

A. Yes, sir.

Q. Did you go to see him for the purpose of getting his notes?

A. No, sir, I went to see him to talk about the visit to Mr. Benson.

Q. You went down and made a statement to the stenographer, did you?

A. No, sir, I made the statement to Mr. Benson—to Mr. Burns.

260 Q. And the stenographer took it down?

A. The stenographer, I think, was there part of the time, and part of the time he was not.

Q. Then you didn't go to the stenographer for the purpose of getting any notes from him?

A. No, sir.

Q. You understand what we mean by the stenographer's notes; that was notes of the special agents that they had of the testimony that was taken in this investigation?

A. Yes, sir.

Q. That is what you understood?

A. Yes, sir, I understand.

Q. Why did you tell Benson that he was being watched if you went there to help the Government make a case?

A. Mr. Benson seemed a little suspicious about the stenographer business and I thought if I told him that kind of a story it would ease his mind a little and he would think that I was still working in his interest.

Q. That was the only reason?

A. That was my reason, yes, sir.

Q. You also told him Mr. Burns was downstairs?

A. That is what I thought you had reference to.

Q. Now, you say he asked you to describe Burns?

A. Yes, sir.

261 Q. Don't you know as a fact that he knew Mr. Burns and knew who he was?

A. No, sir, I don't know it.

Q. Don't you know as a fact that Burns had been on the Pacific coast, and he is quite a striking young gentleman?

A. I admit that, yes, sir. I don't know whether he saw Benson or Mr. Benson ever saw him.

Q. And Burns made himself quite a noted person on the coast in connection with the prosecution of certain cases out there?

A. No, I don't know anything about that.

Q. You knew he had been on the coast for some six months, in San Francisco and about?

A. I knew he had been there but I didn't know he had been in San Francisco.

Q. Now, Mr. Harlan, you testified, as I understand it, that it was the duty of the agents to keep these matters secret. Do you know of any statute of the United States that makes that the duty?

A. No, sir.

Q. Do you know of any written rule or regulation of the department promulgated—that is, I mean written or printed—which states that the duty?

A. No, sir.

Q. Then it is simply a verbal order?

A. It is the rule and practice of the office.

Q. How did it become the rule and practice of the office; by a verbal direction of the Commissioner of the General
262 Land Office?

A. By the Commissioner ruling on the questions when they come up by a request to see those things, and that has become the established practice.

Q. Then you inferred from that that was the rule?

A. No, sir, I don't infer anything.

Q. What I mean by that is, was there any verbal direction to you directly or to any person or officials that clerks in this department shall keep these matters secret?

A. That is the rule.

Q. Answer my question; was there a personal direction on that given to you, or to anybody in your presence?

A. The Commissioner of the Land Office whenever anybody wants to see——

Q. Answer my question?

A. I can't answer your question because it is unintelligible to anybody.

Q. Yes; now let us put it again and see. Was there any verbal direction to you, or to any clerk under you, which stated in so many words all reports of secret service officials shall be kept secret. Now, you can answer that yes or no?

A. I have had a dozen such verbal instructions.

Q. A dozen?

A. Probably one hundred, yes; that is the rule of the office.

Q. About a particular report?

A. About special agents' reports all of them.

263 Q. That they should be kept secret?

A. Yes, sir.

Q. Now, they were all oral declarations of the Commissioner, were they?

A. Yes, sir.

Q. Now, if it was a rule of the office, why should you get it, receive it one hundred times?

A. Because they come up. Mr. Benson probably wanted to see the report of a special agent in a case in which he was interested and would make an application to see it, and I would tell him he couldn't see it, and refer him to the Commissioner. The Commissioner would call me down and he would state the reasons why he wanted to see it and I would state the rule of the office and the Commissioner would sustain me.

Q. Sometimes he would sustain it and sometimes not?
A. No, sir; that is the universal practice.
Q. Were not there many times when you furnished contestants in the Land Office copies of reports for the purpose of having those reports met by counter evidence?
A. Not until after final action.
Q. Well, before final action?
A. No, sir.
Q. When the question was pending?
A. No, sir.
Q. You don't know of any cases of that kind?
A. No, sir.

264 Q. Weren't they furnished almost every day to Congressman and Senators and people connected in Washington?
A. No, sir, not that I know of.

Q. Will you say that they were not?
A. I will say that I don't know anything of it and I was there seven or eight years.
Q. I am only asking you of your own knowledge?
A. Yes; I had no knowledge.
Q. Then why was it that you say you had that direction one hundred times, if it was the general rule of the office?
A. Because people would insist that they had rights to see these things and I would have to go down to the Commissioner and face them.
Q. In each particular case?
A. In each particular case that was called up.
Q. And then the Commissioner would sustain you if, in his judgment, he thought proper?
A. Yes, sir.

Examination adjourned to 10:30 a. m. February 24, 1904.

265 UNITED STATES
vs.
JOHN A. BENSON.

NEW YORK, February 24th, 1904.

Hearing resumed pursuant to adjournment.
Present: Counsel and commissioner as before.

WOODFORD D. HARLAN—cross examination continued.

By Mr. CAMPBELL:

Q. Mr. Harlan, have you now narrated to us all of the business relations that you can remember which you had with Mr. Benson?
A. I think so, yes sir.
Q. Is it not a fact, sir, that during the years 1901–'2 you procured for Benson clients for 65,000 acres of lieu lands?

A. Clients?

Q. Yes; persons who wanted to purchase them?

A. No, sir, not that I have any recollection of.

Q. Did you ever procure *from* him or send to him any persons who desired to purchase any lieu reservation land?

A. I don't remember that I ever did. I tried to, I believe one time, get up a clientage for him.

Q. For how much land?

A. Well, I have no recollection at all.

266 Q. Did you or not ever write to Benson, asking him for prices for 65,000 acres of lieu land?

A. I don't remember that I did; I asked him at one time prices on the scrip but I don't know the acres.

Q. By scrip you mean the right to select lieu?

A. I mean forest lieu land.

Q. There is no paper called scrip?

A. No sir.

Q. Now what were the relations between you and Benson in relation to that?

A. Well, I think that the relations that would have resulted had we come to any sale, was a commission.

Q. A commission to whom?

A. Why, to me.

Q. How much?

A. I don't remember.

Q. There was a contract for sale, was there not?

A. No sir, not that I have any recollection of.

Q. Not that you have any recollection of?

A. No sir.

Q. Will you state that people here in New York had not entered into a contract with Mr. Benson for the sale of this lieu land, and people whom you had sent to Mr. Benson?

A. No sir, I don't know anything of the kind.

Q. You never knew or heard of that?

A. No sir.

Q. In any way, shape, manner or form?

A. No sir.

Q. How much commission were you to receive from this matter, if it had gone through?

267 A. I don't have any recollection on that subject at all.

Q. Why do you not have any recollection?

A. Because I don't know whether we ever got that far along or not.

Q. Just what did you do in relation to that; you got that far along, didn't you?

A. You specify if you can the scrip you have reference to, or the persons you have reference to, and I can tell you possibly something about it.

Q. I have reference to any scrip or any persons which you had any connection with Benson in?

A. I don't have any recollection of any 65,000 acres of scrip.

Q. Then 65 acres, or any acres?

A. I don't have any recollection of any specific amount. I wrote to him in reference to scrip, and wanted to sell his scrip on commission.

Q. What was the result of the letter?

A. The result was that I never sold any.

Mr. BALDWIN: I object to it as immaterial.

The COMMISSIONER: I suppose it goes to the credibility of this witness.

Mr. CAMPBELL: And what the money might have been paid for that he got.

The COMMISSIONER: If the witness knows he can answer the question.

A. I never received any money from Mr. Benson in reference to any sale of scrip.

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Q. Are you willing to say that?

A. Yes sir.

Q. Now if you don't know—you mean by that that you never got any money from him in relation to any scrip at all?

A. Any clientage that resulted in my information to him, yes sir.

Q. How do you know you did not?

A. Because he never said that he gave me any money for that.

Q. But he paid you money and didn't state what it was for?

A. Yes sir; he has paid me money.

Q. And he has paid you money that you didn't know what it was for?

Mr. BALDWIN: I object to that. He has not stated that.

The COMMISSIONER: I think the question is a fair one. He paid him money and now he is asked what he paid it for, and he says he didn't know.

A. I said yesterday I didn't know what he paid me money for in reference to that transaction at the Willard hotel in December.

Q. Yes, and you said that you sent him maps and he sent you money?

A. Immediately following that, yes sir.

Q. He didn't say what it was for, and you didn't ask him?

269

A. No sir.

Q. Is that the fact?

A. That is the fact.

Q. And he sent you $200 that he didn't state what it was for and you didn't ask him?

A. It was in pursuance of the information I gave him.

Q. He didn't state what it was for and you didn't ask him?

A. No sir.

Q. Now in any of the money that he paid you, did he state what it was for?

A. No sir, I don't think he ever did.

Q. Did you ask him what it was for?

A. I asked him for money in pursuance of the information that I had been giving him.

Q. You asked him for money?

A. Yes sir.

Q. What money did you ask him for in pursuance of the information you had been giving him?

A. I asked him for money in pursuance——

Q. What particular money or payment?

A. I asked him for $500 in pursuance of information I had given him in relation to Pugh and Steece's report that was to be made.

Q. Did you get an answer to that?

A. I got three answers to that.

Q. Did you get an answer in writing to that?

270 A. No sir, I don't think there was any writing ever accompanied any of these letters.

Q. Did you get a letter from Benson after you had written to him asking him for $500?

A. I got a letter; three letters from him, yes.

Q. I mean one in writing?

A. No, sir, not that I remember.

Q. Will you swear at that time that you did not receive from Benson a letter wherein he said that I will pay nothing whatsoever for secret service agents' reports because I am not interested in them?

A. No, sir, I don't think I did.

Q. Will you swear to that?

A. From the best recollection and knowledge on the subject I will swear to that, yes.

Q. If you had written to some one of that kind, you would have remembered it, would you?

A. I should think so, yes.

Q. Is your recollection as good about that as it is about anything else that you have testified to now?

A. I think it is, yes.

Q. Now will you kindly tell the court when you received these two and two and one hundred dollars?

Mr. BALDWIN: Objected to as having been gone over.

The COMMISSIONER: I think we have gone over it, but ask him again. I want to give him the opportunity but we don't want to waste time.

271 Mr. CAMPBELL: I withdraw that question.

Q. Didn't you receive that money in April instead of March?

A. No, I think it was in March.

Q. Are you as positive as anything else you have testified to, that you received it in March?

A. That is my recollection, yes sir.

Q. Will you swear you didn't receive the first $200 on the 9th of April?

A. No, sir, I won't.

Q. Will you swear you didn't receive the second $200 on the 23rd day of April?

A. No, sir.

Q. Will you swear you didn't receive the $100 on the 27th day of April?

A. No, sir.

Q. Then if you won't swear to it, what is your best recollection about it?

A. Because I saw Mr. Steece about the middle of April—about the middle of March, I think, and I wrote Mr. Benson, and the money followed directly after the receipt of the letter.

Q. Now let us see; you saw him about the middle of March, 1903?

A. Yes, or early part of March.

Q. And you wrote to Benson thereafter?

A. Yes sir.

Q. Now it takes five days for a letter to go to San Francisco?

A. Yes sir.

Q. And it takes five days for a letter to return?

A. Yes, sir.

272 Q. That is assuming that you wrote the same day that you saw Mr. Steece?

A. Yes sir.

Q. Now then the things which you wrote Mr. Benson you got verbally from Steece, did you?

A. Yes sir.

Q. Then you wrote to Benson what Steece told you?

A. Yes sir.

Q. Not from any information from any report which he had made to the Secretary of the Interior, if you can answer that?

A. I wrote to Mr. Benson——

Q. Now just answer that?

The COMMISSIONER: Answer the question.

The WITNESS: Ask it again.

Q. Not from any report that Steece had made to the Secretary of the Interior or the Commissioner of the General Land Office, but simply what he told you, you wrote to Benson?

A. Yes; that is right.

Q. Now will you kindly state again, Mr. Harlan, what was the contents of that last letter which you wrote Benson on December 10th?

Mr. BALDWIN: Why should he go over it again?

Mr. CAMPBELL: Because I want to test the witness' recollection.

273 Mr. BALDWIN: I object to it.

The COMMISSIONER: We have been over this two or three times.

Mr. CAMPBELL: Will your honor tell me what you remember of it? I don't remember it.

The COMMISSIONER: My recollection is you went over it.

Mr. CAMPBELL: I would like to find out just what it is. My recollection is that he did, but we have a conflict between us as to the contents of the statement. If it is in the record I can read it of course.

Mr. BALDWIN: He stated his best recollection of the contents, and it is in the record.

Mr. PLATT: I don't think he did state the contents of the letter of December 9th, is my recollection of it.

Mr. BALDWIN: If there is any question about it, I don't care.

Q. State again the contents of the letter you wrote to Benson on December 9th?

A. I think I wrote to him—(witness hesitates)—I don't think I can remember that.

Q. Give us the best of your recollection?

A. I think it was in reference to the stenographer.

274 Q. Yes; I think you stated it yesterday. Didn't you state yesterday that you wrote to him that the stenographer would dispose of his notes for a certain amount of money?

A. Yes sir.

Q. Now your memory being refreshed on that, will you state what the contents of that letter of December 9th, written by you, was?

A. I wrote to him that I was acquainted with the stenographer, I think, and that he wanted to know if there wasn't something in it; that he would give me the notes for $1,000, and I think I told Benson that that was too much. I believe that is all.

Q. You mean that the stenographer had been preparing this report of the investigation officers, do you?

A. Yes sir.

Q. Will you kindly look at this envelope (showing) and kindly state in whose handwriting that is addressed?

A. It is in my handwriting.

Q. Where did you mail this letter which you wrote to Benson on the 9th, and sent to him on the 10th?

A. I didn't mail it at all.

Q. Who did?

Mr. BALDWIN: The reason I didn't offer that on the direct was because he said he didn't mail it.

Q. Who did mail it?

275 A. I have no idea who mailed that letter.

Q. What did you do with it?

A. I gave it to Mr. Burns.
Q. You directed it however?
A. Yes sir.
Q. Will you look at that and see if that is your handwriting (showing letter)?
A. Yes sir, that is my writing.
Q. Now will you swear that that is not the letter which you wrote to Mr. Benson, and which was mailed in this envelope on the 10th day of December, 1903?
A. I think that is the letter I wrote.

Letter and envelope offered in evidence and marked, envelope Defendant's Exhibit 1, and letter, Defendant's Exhibit 2.

Q. Now with your memory refreshed by this letter which I show you and which is marked Defendant's Exhibit 2, is the letter which you wrote under the direction of Mr. Burns, the secret service agent of the Interior Department, is it not?
A. Yes sir.

Mr. CAMPBELL: Now I will read it, so as to have it in the record. It is "How can I address an important letter to you. Did you receive my other two O. K. Address me in the same name, only P. O. general delivery." Second P. O. scratched out by lines. "Washington, D. C." "Examine the seal on this letter to see if it has been tampered with. I mail this at the train so the post-
276 mark will not show Washington."

The COMMISSIONER: Is it addressed to anybody?

Mr. CAMPBELL: No sir. The envelope is addressed, "John A. Benson, Esq., San Francisco, Cal., 507 Montgomery street. Personal." Postmarks are on the face, "Tran. cl'k B. P. depot, Was. D. C. Dec. 10. 1903." 2 cent stamp cancelled. On the back of the envelope is "Washington, D. C., Dec. 10. 5.30 p. m. 1903, transit." Another "San Francisco, Dec. 15. 3 p. m. 1903, Cal." And another stamp just "Received."

Q. Now with that letter to refresh your memory, you did not write to Mr. Benson on the 10th day or 9th day of December stating that the stenographer would sell his notes, did you?
A. No sir, I think not.
Q. Now can you kindly explain to the court why it was, if that was not the fact, that you so stated?
A. Why I was under the impression it was the fact until my memory was refreshed by this letter.
Q. Your memory isn't very good as to events of that kind and character?
A. Well, a great many things have been happening lately and crossing my mind with reference to this, and I could not put them in their sequence.

Q. Now with that before you, are you able to state that
277 you stated clearly and correctly the contents of any of these letters?

A. Yes, as far as my memory goes.

Q. Yes, but your memory has shown to be defective?

A. Well, you will have to indicate then wherein it is defective, because I cannot recall anything.

Q. With that before you, are you now able to state that you did not receive a letter from Benson wherein after you had written to him the information which Mr. Steece had given you orally or verbally, saying that you thought it was worth $600, that he did not write to you saying that he would give you nothing for special agents' reports?

A. No sir.

Q. As he was not interested in them and that they could not affect him?

A. I don't remember such a letter.

Q. You won't say however that it was not sent?

A. No sir, I will not.

Q. What did you mean in this letter by saying that you had mailed it on the train so that the postmark of Washington would not be seen or indicated?

A. Well, I don't know what was in Mr. Burns' mind when he asked me to write that letter.

Q. What did Mr. Burns ask you to write; you have stated one thing, and the letter is another. Now tell us what Burns did ask you to write?

Mr. BALDWIN: I object to it as immaterial.

278 Mr. CAMPBELL: It don't need any argument to show your honor it is exceedingly material.

The COMMISSIONER: I allow it.

A. He asked me to write just what is in that letter.

Q. Then why did you make up or remember or think you remembered material which he didn't ask you to write?

A. Because I thought that I had written those things to him.

Q. What made you think it?

A. Because it was running in my mind.

Q. When?

A. All along.

Q. Now sir, wasn't it because you wanted to help the Government make a case, as you said yesterday?

A. No sir.

Q. Sir?

A. No sir.

Q. You were willing to do anything to help the Government make a case against Mr. Benson?

A. I was willing to do anything that I was asked to do, yes sir.

Q. Whether it was right or wrong?

A. That was not a question for me to decide.

The COMMISSIONER: Whether it was right or wrong?

Mr. CAMPBELL: Yes sir.

Q. Or whether you stated a falsehood or not?
A. I make the same answer, that it was not my business.
Q. It was not your business?
A. No sir.
279 Q. You simply did what you were told to do and asked no questions?
A. I done just what I thought was necessary to get evidence.
Q. And you would go far enough, and did go far enough to write things that were not true for the purpose of endeavoring to get evidence?
A. In what respect do you have reference to.
Q. In the first place, by writing that you mailed this letter on the train, which you didn't do. That was a falsehood, wasn't it?
A. Yes sir.
Q. And you were willing to do that to get evidence?
A. I didn't know what became of that letter at all.
Q. But you said that you mailed it, and you didn't mail it?
A. Yes; I wrote the letter.
Q. And in the next place you stated that you wrote to Mr. Benson in November, that notwithstanding the fact of the newspaper notoriety in the matter, that the Government agents had discovered nothing at all against him, when in fact you had gone before the Secretary of the Interior and stated that Benson had given you money, &c.?
A. Yes sir.
Q. And that was false, wasn't it?
A. That was.
Q. And you wrote that because you were told?
A. Yes.
Q. And asked no questions. Now what else did you write
280 which was false which you were told to?
A. Nothing.
Q. Those are the only two things?
A. Those are the only two letters I wrote.
Q. You told Benson however, when you saw him in Washington, you had seen the stenographer, and the stenographer was willing to sell those notes, and that was false?
A. Yes, sir.
Q. And you told him that he wanted $1,000 for them?
A. Yes.
Q. And that was false wasn't it?
A. Well, the conversation was had.
Q. Answer my question. The stenographer didn't want $1,000 for his notes?
A. I don't know whether he did or not.
Q. You didn't know it?
A. No, sir.

Q. And you never have seen him and offered $1,000 for them?
A. No sir.
Q. And he never had asked you $1,000?
A. No sir.
Q. And he came down to $500?
A. He said he would read the notes for $500.
Q. And he didn't say that to you at all; the stenographer didn't?
A. He said it in conversation, yes sir.
Q. That you should tell Benson that he would read to you or to Benson the notes for $500.?
A. He would read them to me.
281 Q. For $500?
A. Yes.
Q. And still that was all a bunco proceeding, wasn't it?
A. I don't know whether it was or not; I presume it was, yes.
Q. Now you were endeavoring in every way that your mind could conceive to trick Benson into making you an offer for money?

Objected to.
Objection sustained.
The COMMISSIONER: Ask him the fact, but you use the word trick.
Mr. BALDWIN: He has already brought out that he made these statements under their instructions, and some statements were not true at the time, and the court can draw its own inference.
Mr. CAMPBELL: Cannot we ask the question whether he was endeavoring to trick the man?
The COMMISSIONER: Ask him whether he was trying to deceive him. I think the word trick should be changed. I think the term is objectionable.

Q. Well, to deceive, using the language of his honor; you were endeavoring in every way you could conceive to deceive Mr. Benson into making you an offer for the stenographer's reports, weren't you?

282 Objected to as incompetent and immaterial.
Objection overruled.

A. I was endeavoring to get evidence for the Government against Mr. Benson.
Q. Were you endeavoring to get it by deception?

Mr. BALDWIN: He has already stated what the deception was, and I don't see how this can be any stronger.
The COMMISSIONER: I don't see how it is. I think he has answered the question.

Re-direct examination.

By Mr. BALDWIN:

Q. Mr. Harlan, how many letters did you write to Benson in December last?

A. I don't think I wrote but one.

Q. But one?

A. That is all I remember.

Q. How many did you write in November?

A. I wrote him one in November.

Q. Was there anything said in November in the letter to Benson about the stenographer and the stenographer's notes?

A. I don't remember whether there was or not; I don't remember the contents of the November letter. I thought that that letter there was in the November letter.

Q. You had a conversation with Mr. Benson about the stenographer however, when he came on in December?

283 A. Yes sir.

Q. Why did you write this Exhibit 2?

Mr. CAMPBELL: In order that we may not be met with the rule, your honor and the district attorney, I propose to permit Mr. Platt to re-examine this witness, and I will not take any further part with this witness, so we will be within your rule.

Mr. BALDWIN: I don't suppose we will stand on that.

Q. Where did you write this Exhibit 2?

A. I wrote it in room 136 General Land Office, in Washington, D. C.

Q. And you wrote it in pencil?

A. Yes sir.

Q. And upon letter paper that was used there?

A. Yes sir.

Q. And the envelope was addressed there too?

A. Yes sir.

Q. And then delivered to Mr. Burns?

A. Yes sir.

Q. And the statement which you made in this Exhibit 2, you did because Mr. Burns requested you to?

A. Yes sir.

Q. Giving you the substance of what to state?

A. I think I copied the letter from Mr. Burns' draft; I am not sure.

Q. Now going back to the time when you received remittances in March, 1903, there *was* investigations, I understand it, being made by Pugh and Steece?

A. Yes sir.

Q. And those were the reports which you expected and

284 hoped to get?

A. Yes sir.

Q. That is to say, reports or information contained in the reports? Is that right?
A. I was trying to get a copy of the report.
Q. You were trying to get a copy of the report?
A. Yes sir.
Q. You had a talk with Steece then about that time?
A. Yes sir.
Q. When he was back?
A. When he came to Washington to deliver his report with Mr. Pugh.
Q. And the information that you got from him was information contained in his report?

Mr. PLATT: Objected to.
The COMMISSIONER: I have been very liberal with you.
Mr. PLATT: Yes; you would be on cross examination. The fact the witness has stated that he never saw the report; the reports were not made.
Question withdrawn.

Q. You said upon your cross examination that you had written to Mr. Benson about getting these reports?
A. Yes sir.
Q. And that what information you got, you had gotten
285 from Mr. Steece and not from his report. Now what do you mean by that?

Mr. PLATT: I don't think he testified to it.
The COMMISSIONER: Yes; I think they opened the door.
Mr. PLATT: I don't think it opens the door for Mr. Baldwin stating he said something on his cross examination which he didn't state.
Objection overruled. Exception.

A. I received that statement verbally from Mr. Steece.
Q. Statements verbally about Benson and Hyde's connection with this investigation?

Mr. PLATT: I object to his stating any conversation he had with Steece, in the absence of Mr. Benson.
Mr. BALDWIN: But he communicated to Benson whatever it was.
Mr. PLATT: He can state what he said to Benson but he cannot state what he and Steece said.
The COMMISSIONER: Between two other parties, I don't think they have a right to go into that. It is hearsay evidence.
Mr. BALDWIN: Your honor will recall I asked him no question about what Steece had said.
286 Question withdrawn.

Q. I understood you to say that in conversation that you had with Benson he told you to look out for these reports of Steece and Pugh?

A. He asked me to keep him advised as to the reports; as to the examination.

Q. Now in answer to a question of Judge Campbell's you stated that at some conversation, either in 1898 or 1899, Benson told you that Clarke's applications or part of them were perfect. Just what did he say at that time?

A. That was in December, 1903.

Q. It was?

A. Yes.

Q. Then I got the date wrong. What did he say about that?

A. He said that Mr. Clarke had a number of forest lieu selections which were absolutely correct, and that he was going to see, or have his attorneys, Messrs. Britton & Gray see the Secretary and have these suspensions relieved.

Q. Mr. Benson had other applications, did he not other than those standing in the name of Clarke?

Mr. CAMPBELL: If you know?

A. Well, I haven't any knowledge as to what interest he had in Clarke's applications, no sir.

Q. Did he state that all of the Clarke applications were perfect, or most of them?

287 A. I think he said a number; a large number, or a number were absolutely perfect.

Q. Now this conversation that took place in a room in the Willard hotel, you said you went into a water closet; was that water closet attached to the suite of rooms Benson had?

A. Yes sir.

Q. It was not a public water closet?

A. No sir; it was a part of the room.

Q. Now coming down to the conversation or conversations that you had with the Secretary of the Interior, Mr. Harlan, after refreshing your recollection, or if anything has occurred to refresh your recollection as to whether you had more than one conversation with the Secretary of the Interior?

A. I had two conversations with him I think.

Q. But they were within a day or two of each other?

A. Yes sir, very shortly; very close together.

Q. In speaking of the *modus operandi* of obtaining patents for the land where the applications are made based upon base lands, accompanied by abstracts, the abstracts themselves would not be accompanied by any of the original papers for the base lands, would they; the abstract of title?

A. It was an abstract of the base lands. Yes, the base lands are in the abstract.

288 Q. What I mean to say, the original papers upon which the base lands were obtained, would not accompany the abstract?

A. I think not, no sir.

Mr. CAMPBELL: Now that puts me in mind, and we ask that these abstracts that the witness spoke of, particularly the abstract of the Benson lands that are in the possession of the Government, be produced in court. They are in the possession, I understand, of Mr. Macy, a Government witness, and your honor has a right to see we have them.

The COMMISSIONER: We have a right to get at that. It is a question I want to get at myself.

Mr. BALDWIN: I have asked no questions about the abstracts. This is re-direct examination.

The COMMISSIONER: No; I understand that.

Q. You say there was a division R. created. When was it created, and what was that division?

A. It was created, if I remember correctly, on the 1st of March, 1901. It was a portion of the work that was in my former division and when that division was created it was called division R., or division of forestry, and all matters relating to forest lands, forest reservations and lands within forest reservations, and the management hereof, were transferred to division R. from division P.

289 Q. And what were your duties after that?

A. My duties after that were what they had been before with the exception of the forestry division. I had charge of the special agents of the Land Office, the examination of their reports, and the preparation of instructions to them.

Q. What I wanted to bring out was, that your duties as far as investigation is concerned by the special agents, had not changed by the creation of this division R.?

A. Well, in a certain sense, yes. They were what they called special agents of the forestry division, as well as special agents of the General Land Office. I had charge of the special agents in the Land Office, and the forestry force in the field were called forest rangers, forest supervisors, and forest superintendents. I had nothing to do with their reports.

Q. But reports that were made by the special agents in the Land Office that might refer to the lieu lands, or to lands that had been exchanged for lieu lands, would still come to the same division it did before, as far as the secret service of the office?

A. Anything pertaining to fraud, yes.

Q. And there was no change made in that respect?

A. I think not, sir.

290 Mr. CAMPBELL: Do I understand that applies to April 1st?

Mr. BALDWIN: Yes.

Mr. CAMPBELL: This was created March 1st, 1901.

Mr. BALDWIN: I am speaking now of March and not April.

Q. When you had your first talk with Mr. Benson and told him about Valk, and that you would speak to Valk, did you also tell Mr. Benson that you had seen Valk?

Mr. PLATT: Objected to as having been gone over before. Question withdrawn.

Q. When you had a talk with Benson to expedite the claims that he was interested in, did that or not involve the placing of the claims that he was interested in ahead of other claims that had been prior to them in the date of the filing?

Mr. PLATT: Objected to. I have no objection to his asking exactly what was said between them, but I don't want him to state his inference.

The COMMISSIONER: Tell us what took place.

Mr. BALDWIN: They went into that and I did not.

291 The COMMISSIONER: Yes, but talk us the whole business.

Mr. PLATT: I object to his asking anything more than was said.

The COMMISSIONER: That is what I mean; what was said between the two men.

A. The arrangement was——

Mr. PLATT: No. What was said?

The COMMISSIONER: Tell us what Benson said and what Benson *said*.

A. He said he had a number of forest lieu selections that were coming in, and soon they would be coming in in greater numbers, and he wanted to make some arrangement with reference to expediting them and getting them passed through. I told him a gentleman named William E. Valk in my department had charge of that matter specially and that I would have to see him with reference to it, but I thought Valk would agree to the arrangement and Benson then asked me to have Mr. Valk come and see him after four o'clock on that day.

Q. Now you have been through that once. Now was anything said at that conversation or any conversation how these claims were to be expedited?

A. No sir, I think not; if there was anything of that kind

292 made, it was made with Mr. Valk and not with me.

Re-cross examination by Mr. CAMPBELL:

Q. Now at the time you had this conversation with Mr. Benson in December, 1903, you know as a fact, do you not, that the Secretary of the Interior had suspended all of the entries in which Mr. Benson or Mr. Hyde appeared at all?

Mr. BALDWIN: I object to it as incompetent and immaterial.

Mr. CAMPBELL: They want to draw the inference that Mr. Benson picked out certain cases which were, and in fact some were not. Now it is a fact that the Secretary of the Interior put his hand without any evidence or anything else, on all the entries in which these

gentlemen appeared as attorneys, and suspended them, and it explains this conversation in relation to the Clarke applications which he said were absolutely perfect, and which he was going to have his attorneys fight.

The COMMISSIONER: I am against you on that. He has asked him whether the Secretary had not suspended a lot of these. How does this man know?

Mr. CAMPBELL: He knows it.

293 The COMMISSIONER: If he did how does it affect this issue?

Mr. PLATT: He has referred here on his re-direct examination to a conversation that he had with Benson at the hotel in December last, in which Benson said to him that there were certain of the Clarke applications that were perfect, and he was going to get the Secretary, through his attorneys, to release those applications. Now Mr. Baldwin on his direct examination questioned him about that, and has assumed to draw some inferences about it. Now it is proper that this witness can, if he knows—of course if he doesn't know he cannot—explain the situation so that that conversation can be fully understood, and the inferences which Mr. Baldwin has attempted to have drawn from it should be explained.

The COMMISSIONER: Answer it if you know.

Mr. BALDWIN: I don't want it answered unless he knows of his own personal knowledge.

Mr. PLATT: Neither do I.

A. I don't know of my own knowledge whether at that time any rules had been made of the suspension of the entries, but prior to that time all forest lieu land applications had been suspended by the Secretary.

294 Mr. CAMPBELL: I would not like to have your honor discharge this witness from attendance until we get through with the case, which may be tomorrow or the day after.

The COMMISSIONER: That is for the district attorney. The witness is here under subpœna of the Government.

Mr. CAMPBELL: If the Government pays him $2.00 a day, I will pay the $2.00 out of my own pocket.

Mr. BALDWIN: No. The point is this, that the rule is that a person must exhaust what cross examination they may desire to make of any witness, at the time it is offered. Now I am not going to hold this man here. If there is nothing more to ask him let him go back to Washington.

Mr. CAMPBELL: We supposed we would get an opportunity to look over all of the testimony and you see this morning we were mistaken as to what he testified to, some of us. Now I don't know what the rule is in the *for* East but it is the rule that you have the right to recall a witness at any time during the progress of the trial in the discretion of the court for further cross examination.

295 The COMMISSIONER: The trouble, Judge, is this, here is a man from Washington——

Mr. BALDWIN: Mr. Pagin has suggested, that so far as the Government is concerned, we just as soon keep him here, so he will stay. While waiting for a witness, why not arrange for the other hearing set down for to-day. Now we have three or four witnesses here, and we will go right on and take their testimony in the second proceeding on Friday, if agreeable to you.

Mr. PLATT: I question the right of the Government to have two proceedings for a removal of a man at the same time.

Mr. BALDWIN: I am perfectly willing to take the Government chances on it.

Mr. PLATT: It is a question of right, and not a question of chances. Friday morning my father is coming over here, and he has called a very important meeting of the United States Express Company for Friday morning at eleven o'clock, and I must be present at that meeting. I am chairman of the executive committee of the board, and I suppose we will be out at 12 o'clock; it may be half past twelve.

296 The COMMISSIONER: We can go on at half past twelve.

Mr. PUGH: We have witnesses here from California, and we would like to examine them first so as to let them go away.

Mr. CAMPBELL: I do not think we will question the examination of witnesses from California, but we say to you that we would not be ready to go on and complete the examination of the other case because it will take us 60 or 90 days to get our testimony.

The COMMISSIONER: As to this case, there was a proposition the other day as to whether the testimony taken here so far as applies to the other case, may stand.

Mr. CAMPBELL: I cannot agree to that, because we are going to make an application to take the further testimony of those witnesses. So far as that testimony is taken we would have no objection to it, but we must examine them further on this other case, particularly Mr. Slack, and probably Miss Doyle. We will proceed with the witnesses you have from California in the second case on Friday, and we will agree upon a continuation afterwards.

297 Mr. PLATT: We will go ahead on Friday afternoon, if Mr. Shields will tell me that both he and I are going on here so as to cover another engagement.

WILLIAM E. VALK, sworn for the Government, testified as follows:

Examined by Mr. BALDWIN:

Q. Where do you reside?

A. Washington, D. C.

Q. What position do you occupy in the Interior Department at Washington, if any?

A. Principal examiner.

Q. Principal examiner?

A. Yes, sir.
Q. How long have you held that particular position?
A. Since September, 1902.
Q. What position did you occupy before that?
A. I was in charge of what they call lieu land forest reserve selections.
Q. In due course of the business, what were your duties when in charge?
A. I was a sort of supervisor and reviewed the work of other clerks and put my initial upon letters if I approved of them, and passed cases and examined them.
Q. What was the class of business that came to that office in that branch?

298 A. It was what they call exchanges under the act of June 4th, 1897; it was the exchange of lands within forest reservations for land without the reservations.

Q. What are your duties in your present office?
A. It is examination of contests between two parties or others.
Q. Now do you recall about the time that what they call the forest lieu land selections began to come into that office?
A. Some time about in the fall of 1897.
Q. And a short time after the act became operative?
A. Two or three months or so after the passage of the act, or a month or so.
Q. Do you know the defendant, John A. Benson?
A. I do.
Q. When did you first meet him?
A. I think in the fall of 1897, or early in 1898.
Q. Where did you meet him?
A. In Washington at the Atlantic building.
Q. In whose office?
A. In the office of Capt. Thomas.
Q. How did you happen to go there?
A. Why my chief at that time suggested that I go.
Q. Who was that?
A. Mr. Harlan.
Q. Did you have a conversation with Benson at that time?
A. I did.
Q. Now just state that conversation as near as you can recall it, what you said and what he said?

299 Mr. PLATT: Now I object to this as irrelevant. It has nothing to do with the charges that are made in this complaint.

Mr. BALDWIN: It is the same question raised before.

Mr. PLATT: You took the other testimony under a motion to strike out. Now it appears from the testimony of the other witness, that it was an entirely unrelated transaction, and it seems to me that the Government have shown clearly by the testimony of the previous

witness that it is not in any way relevant to the charges made in this complaint.

The COMMISSIONER: I am inclined to think they are entitled to it, and I give you an exception.

Q. Now Mr. Valk, go ahead and state the conversation. This was in the fall of when?

A. Fall of 1897 or early in 1898, I am not precise as to the date.

Q. Now state the conversation as near as you can recall it?

A. After having been introduced to Benson——

Q. By whom?

A. By Capt. Thomas, Capt. Thomas left the room and left us closeted together. Mr. Benson referred to having seen Mr. Harlan and also to the fact that I might do the business, or we might do it together. The conversation Mr. Harlan had with him was
300 on those lines, and to be brief in the matter, we did come to an understanding——

Q. I don't want that brief at all. Give the conversation?

A. I couldn't recall his words.

Q. Give it as near as you can recall what he said to you and what you said to him, giving the substance of it?

A. The substance of it was that there was some money to be made out of it, and he was willing to pay it.

Q. Out of what?

A. The advancement of cases that he was interested in.

Q. What kind of cases?

A. Forest reserve lieu selections.

Q. What did he say you should do, and what did you say you would do, if anything of the kind occurred?

A. The impression was——

Q. No.

A. Well, I can't quote him; I am giving my version of it—that Mr. Harlan and he had agreed upon certain terms.

Q. What terms?

A. Money consideration; certain payments to be made.

Q. How much?

A. Amounts were not mentioned then to me.

Q. Go ahead?

A. And after that I assented to assist Mr. Harlan in his
301 efforts to expedite the work in which Mr. Benson was interested, and did do so. We parted shortly after that with that understanding.

Q. Was there anything said at that interview about a list of selections?

A. He said that he would advise—he would send on a list of the cases he was interested in.

Mr. PLATT: Mr. Commissioner, in order to avoid interrupting the counsel, I ask that all this testimony may be considered as being taken subject to the objection which I made a few moments ago.

The COMMISSIONER: Certainly; also to the other objection. It is all taken subject to objection.

Mr. PLATT: And the exception.

The COMMISSIONER: Yes.

Q. Did you receive from Mr. Benson a list of selections?

A. In due course, yes sir.

Q. And did you advance them?

A. I advanced some of the cases.

Mr. PLATT: State just what you did.

Q. What did you do with them or any part of them?

A. He sent me a list of cases in which he was interested, and those that I found to be in a condition to be advanced, that were perfect, they were expedited; they were sent through.

Q. What do you mean by expedited?

A. Approved.

302 Q. What do you mean by advanced?

A. They were taken out of the files and hastened along out of their course.

Q. You mean they were advanced out of the due course?

A. Yes sir.

Mr. CAMPBELL: Now that is not the charge in this complaint, Mr. Commissioner, that the money was paid to this man to have this man furnish to him, Benson, certain reports of certain special agents, which came into his possession in the discharge of his lawful duties. Now I raise the question that what he is testifying now is no crime. It is not a violation of a duty of the United States, and we have only come here prepared to meet that which is set forth in this complaint. If the witness is allowed to testify—I do not suppose there is a Congressman on the Pacific coast, nor a Senator, who don't go to the Land Office every day. I have made application after application to have cases advanced myself, when Mr. Noble was the Secretary of the Interior, and have had personal letters from him, and that cannot possibly be said to be a violation of the laws of the United States, or of any rule or regulation. Here is a case in which the abstract shows everything is plain, clean and clear, and here is another case in which probably they have to do something

303 in. Here is a clerk that takes up one that is perfect and passes it on. Why surely that cannot be said to be a violation of any lawful duty. In fact it is his lawful duty to do it. It is not the lawful duty of any person, because one case happens to be slow or imperfect, that that shall clog the whole stream and let the ice collect back of it. I think he is doing his duty according to the statements so far made.

Mr. PLATT: Now let us look up the complaint for a moment.

The COMMISSIONER: Let us get the ordinary run of the office. That won't hurt you.

Mr. PLATT: That is not what he is asked. He is asked whether

he advanced some of the cases of Benson's. Now let us be a little bit fair about these things.

The COMMISSIONER: Suppose he did advance them?

Mr. PLATT: Well, if you don't mind, I would like to say a word. If I cannot express my views I will go away.

The COMMISSIONER: I will hear you.

Mr. PLATT: Here is this complaint which incorporates an indictment and that is what we have come here to meet. Now the
304 only charge there is here about Mr. Valk is contained in the eighth count, and it says that in December, 1903, $100 was paid to Mr. Valk to obtain the contents of a special agent's report. Now he comes here and is put on the stand and is asked as to something that happened way back in 1897 that has no relation to this whatsoever. He is asked and he is testifying about certain lists of cases, and so on. We haven't come here with papers or anything ready for that thing. It is a perfect surprise to bring such a thing as that at us, and he ought not to be asked or allowed to testify to such matters at all.

The WITNESS: I would like to make a statement in this matter.

Mr. BALDWIN: No. I will be able to make all the statements myself.

Now Mr. Platt has evidently forgotten the fact that Judge Campbell was very particular to have Mr. Harlan testify as to what the advancement and expediting of these cases were. Now Mr. Harlan has testified just what was done, how it was done, and it would be a matter for Mr. Valk. That he was not the one that had par-
305 ticular charge of that work. That is one answer. The other answer is that the same situation of this witness obtains as with Harlan; that is to say, the Government has a right, for the purpose of showing the environments of the parties and how it was that Valk should be one of the persons who should be chosen by Benson in December, 1903, to offer a tender of money to. Not only would the Government practically fail in its case to show the antecedents of the transactions, but this is an antecendent of the transaction which is in line with all that occurred right down to each of a number of acts contained in the indictment, and I submit it is competent.

Objection overruled. Exception taken.

Mr. PLATT: Then the testimony on this subject will all be taken subject to our objection and exception.

The COMMISSIONER: Yes, with liberty to move to strike out hereafter.

Q. Were there a large number of lieu selections from Mr. Benson or Mr. Hyde?

A. Not at that time.

Q. When did you next see Benson?

A. I think it was the fall of 1898 or 1899.

Q. It was subsequent to this first time?

A. Yes sir.

Q. Had there been a number of selections come in from
306 him during that interval?

A. Yes sir.

Q. When did you next see him—in whose name did the applications come in, do you recollect?

A. F. A. Hyde and C. W. Clarke predominated, and Elizabeth Diamond and C. E. Glover. I can't recall the other names.

Q. Were they on the list that Benson sent to you?

A. Yes sir.

Q. You say you next saw Benson after that sometime in the latter part of 1898 or 1899?

A. Yes sir.

Q. Where did you see him?

A. At the Shoreham hotel.

Q. How did you happen to go there?

A. He said he wanted to see me; he was to be there.

Q. Did you have a conversation with him?

A. Yes sir.

Q. What was the conversation that took place at that time?

Mr. CAMPBELL: Is that in 1899?

The WITNESS: In 1898 or 1899, in the fall of either year. Well, it was in reference to my work.

Q. What was the conversation; what did he say and what did you say, giving the substance?

A. We discussed different cases; I don't recollect them.

Q. Nobody knows what different cases means?

A. I could not specify the numbers but they were cases of
307 Mr. Hyde's and Clarke and those he was interested in that were indicated in the list.

Q. You discussed cases of selections of Benson's that had been on that list?

A. Yes, on several lists; not only one; no particular list.

Q. Did you have any conversation with him about any talks with Mr. Harlan?

A. Not at that time—oh yes, I did, too.

Q. Well?

Mr. PLATT: Do you understand you are going to testify about some talk you had with Mr. Harlan?

Mr. BALDWIN: No; what conversation he had with Benson relating to Harlan.

Mr. PLATT: That is all right.

A. It seemed that Harlan and I had had a falling out and unde the previous arrangement we didn't agree. I didn't think I was getting——

Mr. PLATT: State what you said and what he said.

A. (Continuing:) I say I intimated to him that if he was receiving money from Benson he wasn't making proper returns to me because

under the system we were working we were to get so much an acre, and I wasn't getting my proportion of the sum received.

308 Mr. CAMPBELL: In other words, you thought Harlan was knocking down.

The WITNESS: I beg your pardon, Judge.

The COMMISSIONER: Never mind. The witness is with the Government.

Q. What did he say in answer to that?

A. Well, he was inclined to agree with the suggestion from me that the money come to me direct instead of going through Harlan's hands, and eventually we agreed we should do business directly.

Q. Now what was the agreement per acre?

A. 10 cents per acre for all selections approved in which he was interested.

Q. And how was the money to be paid?

A. He intimated he would send it.

Mr. PLATT: He hasn't testified any arrangement was made.

Mr. BALDWIN: That is just what he has testified.

Mr. PLATT: No, he hasn't testified any arrangement was made with him. Now I move to strike out what he said about an arrangement, because he hasn't testified Benson ever made any arrangement with him.

The WITNESS: I think I did.

Mr. PLATT: No, you did not.

The COMMISSIONER: Tell us what took place; give us the

309 substance of it.

The WITNESS: The substance of the conversation was with reference to the cases in which he was interested and they had been sent to me or indicated to me by list, and then the conversation—then I referred to the unfairness as I thought of Mr. Harlan's dealings with me.

Q. What do you mean?

A. I wasn't getting my proper proportion of the allowance due me.

(By the COMMISSIONER:)

Q. Was there anything said about money then?

A. Yes sir.

Q. Tell us what took place?

A. I told him I wasn't getting my proper share of the proportion of the money that was coming through Harlan's hands that was intended for me.

(By Mr. BALDWIN:)

Q. Did you tell him how much money you had been getting from Harlan?

A. I didn't specify only I knew so many acres had been approved, and I expected a certain sum and I didn't get but a small amount.

Q. Did you tell him how many acres had been approved?
A. I think I did.
Q. How many?
A. I could not recall now.
Q. What further was said. You testified a moment ago about something being said about dealing directly with you?
310 A. I said I was dissatisfied with the previous arrangement under which Harlan and I had been working, and I told Benson—I don't remember the words now—that I would do the work myself and expected to be recompensed directly.
Q. Did he say anything to you about how much was to be paid and to whom he would pay it?
A. He would pay me 10 cents an acre.
Q. 10 cents an acre for what; all selections?
A. All forest reserve lieu selections approved.
Q. Now do you remember what room this was in?
A. It was parlor B. I think.
Q. Did you have an overcoat with you at that time?
A. I did.
Q. What did you do with it?
A. I laid it on the couch in the room.
Q. Did you see Benson do anything about the overcoat?
A. He went towards it and did something; I found some money there.
Q. What did you see him do?
A. He monkeyed around there; I didn't know exactly what he did; I wasn't watching him particularly. Afterwards I discovered there was money there.
Q. When you picked up your overcoat did you find any-
311 thing?
A. I found some money, yes.
Q. How much?
A. I think it was $50.
Q. And in what condition did you find it; where was it?
A. It was in an envelope; a bill in an envelope.
Q. A $50 bill?
A. Yes sir.
Q. Now do you know where he went from there; whether he left town and went away?
A. I don't know where he went; he said he was going to New York.
Q. Did he return?
A. He did.
Q. Did you see him again?
A. Yes, sir.
Q. Where did you find this envelope in your overcoat?
A. I am not certain—I don't think it was in the pocket. My first impression was it was; but I don't think so; I think it was in the fold.

Q. It wasn't there when you put the coat down?
A. Oh, no, sir.
Q. Did you have a conversation with the defendant Benson after he returned?
A. Yes sir.
Q. What was that conversation?
A. On the same lines with reference to the work; expedition of the work.
Q. Anything said about the question of compensation?
A. No, that had been understood.
Q. What else occurred there at that conversation?
312 A. Well, I think there was where he gave me a code book.
Q. Go ahead with that?
A. And told me that when I wanted to communicate with him by wire to use that book.
Q. What kind of a code book was it?
A. I have forgotten the name; it was a Commercial Telegraph code.
Q. And he told you to what?
A. Told me that when I desired to communicate with him by telegraph, to use that book.
Q. Anything said as to how he would communicate with you?
A. In the same way, using that book, I inferred from the conversation.
Q. Anything said about writing him?
A. Oh, yes, he was to keep me posted from time to time.
Q. Now did you use this code book or the cipher?
A. On two or three occasions, yes, sir.

(By Mr. CAMPBELL:)

Q. On two or three occasions?
A. Yes, sir.

(By Mr. BALDWIN:)

Q. How did you address it?
A. To John A. Benson, 527—507—let me see—507—I have just lost the track of the number of the street now; it will come to me in a minute.
Q. Was it Montgomery street?
A. Montgomery, yes sir.
Q. Now any statement or agreement between you as to
313 how his letters were to be written or initialled, or anything of the kind?
A. Yes; I think he was to initial his letters with the initial B., and I think I told him I would initial mine with the initial T.
Q. Now when any of the Benson cases were advanced, did you communicate with him about it?
A. Yes.
Q. What would be the form of the communication?

A. I would just send him a list of the cases, giving descriptions and area and indicating the dates of their approval.

Q. Indicating the area; was that done pursuant to any statement made by you to Benson, or by him to you?

A. Yes sir; of course it was to let him see just what money was due me.

Q. Now after you reported to him the number of selections approved, did you receive any remittances from him?

A. Yes sir.

Q. How often?

A. Oh, sometimes quite frequently and sometimes on the spot.

Q. Do you remember now any particular instance of the denomination, of the amount and time?

A. Anywheres from $50 to $200, and $20 bills and $50 bills and $100 bills.

Q. These would be after the selections had been approved and after you had notified him?

A. Yes sir.

314 Q. And how long did you continue under this arrangement with Benson, to advance his cases to approval?

A. I think it was up to the summer of 1902; about that time.

(By the COMMISSIONER:)

Q. 1902?

A. Yes sir.

(By Mr. BALDWIN:)

Q. Did anything occur during that time, any act of the department by which you were able to advance the cases more rapidly?

A. Yes sir; there was a verbal order issued by Commissioner Hermann that we should go through the files and all cases that were perfect to pass them along to approval, and those not perfect, indicate it by some little note on the back of them and put them back in the files again.

Q. When was this, do you remember?

A. I think that was between the summer of 1901 and 1902.

Q. Wasn't it about November, 1902?

A. Yes; I said between the summer of 1901 and 1902. Yes, it is about November now, that you refresh my memory.

Q. Did that enable you at all to facilitate Benson's claims?

A. Yes sir.

Q. Do you remember the full names of these claims or any of them?

A. Hyde and Clarke principally; F. A. Hyde and C. W. Clarke.

Q. Now how much had you received by way of remittances
314½ from Benson during this time for the services which you had rendered?

Mr. CAMPBELL: I will note an objection to that on the ground that

the evidence of the witness now shows it was not for any violation of duty, and it is incompetent, irrelevant and immaterial.

The COMMISSIONER: Let us go on and finish it up.

Exception taken.

A. I think in the neighborhood of $2,000.

Q. The order of the Commissioner allowing certain cases to be facilitated, did that order provide that cases should be advanced out of their order?

Mr. PLATT: It was a verbal order.

Mr. BALDWIN: He said so.

A. Yes sir; it was to go through the files and take up all cases that were perfect, and those that were not perfect were to be passed over and put back in the files.

Q. This was in 1901?

A. Yes sir.

Q. How much did the remittances amount to prior to that order?

A. Oh, I suppose $800 or $900, or something like that.

Q. Now when did you next see Benson?

A. I think it was the 16th day of last December.

315 Q. Where did you see him?

A. At the Willard hotel in Washington.

Q. Where did you see him; what part of the hotel?

A. I think it was the second floor, room 213.

Q. Did you have a talk with him?

A. Yes sir.

Q. Now give us that conversation as near as you can recollect it?

A. Mr. Benson wanted to know what was doing with reference to this investigation that had been instigated by the Government, and I told him that I thought that they had very little bearing upon him; more especially upon Mr. Hyde and others.

Q. Did you state anything to him about his name being mentioned at all in that investigation?

A. Yes sir, I told him that his name had been mentioned on two or three occasions; I had been asked with reference to him on several occasions.

Q. What do you mean by asked?

A. He asked me if they had been doing anything that had been asked about him; that I had been asked about him specially.

Q. By the investigating officers?

A. Yes sir, by Burns, and Mr. Pugh, and I told him that I had, but more especially Mr. Hyde.

Q. How long did you stay there?

316 A. I presume it was 15 minutes.

Q. What else happened then?

A. Well, I started to leave—Mr. Benson got up and said he wanted to go to the bath room and did go to the bathroom.

Q. After he came out, then what?

A. Then he asked me if I didn't want to go to the bathroom.
Q. What did you say?
A. I said, Yes, I believe I will, and I went in there, and I saw some money lying on the washstand.
Q. What was that money?
A. I picked it up. I don't know what the amount was then. I put it in my pocket.
Q. In what form was it when lying there?
A. I think it was——
Q. Was it in a package, or out of a package, or what?
A. I think it was three $20 bills or four $20 bills, and two $10 I think.
Q. What did you do with the money after you left?
A. I joined Mr. Burns, as agreed, and we went up to the Losekam, and I turned the money out of my pockets, and we counted it in Mr. Burns' presence, and turned it over to Mr. Burns.
Q. Did any person initial it then?
A. I initialled and Mr. Burns under me.
317 Q. Look at the five bills I show you, or six bills rather, four $20 and two $10?
A. Yes sir.
Q. Are those the bills you picked up at that time?
A. Those are the bills.

Offered in evidence and received as Exhibit 2.

Q. Nobody had been there but yourself and Benson?
A. No sir.

(By Mr PLATT:)

Q. These are your signatures, these W. E. V.'s on these exhibits, are they?
A. Yes sir.
Q. Your initials?
A. Yes sir.
Q. Put on there by yourself?
A. I did.

(By Mr. BALDWIN:)

Q. Did you have any conversation about Hyde?
A. Yes, he told me I think——

Mr. CAMPBELL: We object to that as incompetent, irrelevant and immaterial.
The COMMISSIONER: Let us have the conversation that took place. Exception taken.

A. Yes sir.

(By Mr. PLATT:)

Q. This is a part of the same conversation?

A. Yes sir. I told him I thought that they were investigating Hyde, but also that Mr. Hermann, the Commissioner was mentioned. Then Benson told me that he and Hyde had dissolved partnership, and were no longer together.

318 Cross examination by Mr. PLATT:

Q. I understood you to say, Mr. Valk, that your duties changed in September, 1902?

A. Yes sir.

Q. What division or bureau of the General Land Office did you go to in September, 1902?

A. Called division H., or the contest division.

Q. That had no relation, had it, to these cases that you have been testifying about?

A. No sir.

Q. Not to that class of cases at all?

A. No sir, but still sometimes there would be a contest against one of these cases.

Q. But the duties that enabled you to expedite Mr. Benson's cases were not in that division H. at all?

A. No sir; it was a distinct work.

Q. So that after that time you entirely ceased to do anything for Mr. Benson under the arrangement that you have talked about?

A. Yes sir.

Q. Can you give us the date in September, 1902?

A. I think it was the 12th; I am not positive.

Q. And your arrangement with him continued, do I understand you to say, down to that time?

A. Well, after the Commissioner's order had lapsed probably my work——

Q. You mean this order in November, 1901?

319 A. That verbal order, yes.

Q. In regard to expediting cases?

A. Yes. I think after that ran out my work for Mr. Benson practically ceased.

Q. You say it ran out?

A. Well, lapsed; we had gone through the files.

Q. And had taken up the perfect cases?

A. Yes sir.

Q. And had passed them?

A. Yes sir.

Q. That is to say, the Commissioner had passed them?

A. Yes sir.

Q. Those cases all had to be passed upon by the Commissioner, did they not?

A. He had to sign all letters, or the acting or Assistant Commissioner.

Q. The Commissioner or the person acting in his absence?
A. Yes sir.
Q. And what you did was to pass letters up to him for his signature?
A. I did.
Q. Either passing these lieu land applications or rejecting them?
A. There were no rejections at that time.
Q. I am not speaking of that time now. I mean to call your attention back to the time previous to that, the time that you have been talking about in 1897 and 1898 and 1899?
A. Yes sir.
Q. Did you write those letters?
A. I would write some.
320 Q. And some of them would be written by other clerks in the office?
A. Yes sir.
Q. Had you an official designation as overseer or supervisor in that office?
A. Not at that time.
Q. Did you at any time have such a designation officially?
A. After division R. was formed, I was put in charge of that work.
Q. Then that was when; April, 1902?
A. About that time.
Q. So you were personally on the work only from April, 1902, down to September, 1902?
A. Yes sir.
Q. Was that a specially created office? The position of supervisor, or just designated to do the work?
A. Just designated to take charge of that class of work.
Q. And your commission read as a clerk?
A. Well as clerk; as a principal examiner.
Q. Were there other principal examiners?
A. There were none engaged in that work.
Q. You were the only one?
A. Yes sir.
Q. There were other examiners?
A. There were other examiners, yes sir.
Q. Other examiners first in the special service division?
A. Yes, called clerks; that is all.
Q. Yes, but I mean there were others beside you who were
321 doing this work of preparing the letters for the Commissioner's signature?
A. Yes sir.
Q. Now you testified that you entered into this arrangement with Benson some time in 1897 or 1898?
A. Yes sir.
Q. Cannot you fix it any more definitely than you have?
A. I said I think it was in the fall of 1897 or early in 1898.

Q. Was it in the winter, do you remember?

A. I think it was late in the fall.

Q. Of what year?

A. 1897 or early in 1898; I am not certain just when it was, but it was about that time. There was nothing to impress it upon my mind.

Q. Now I do not understand when you had your first talk with Benson in Capt. Thomas' office, that anything was said to you about the rates of compensation for your work?

A. Not at that time to me.

Q. But you were alluding to the fact that something had been talked about in that direction with Harlan?

A. Yes sir; he told me he had seen Harlan and talked over matters.

Q. Shortly after that these lieu land applications began to come in?

A. They were in then, some of them.

Q. Did you get shortly after that a list from him?

A. Yes sir, and continued to get them.

322 Q. You got after that various lists from him?

A. Yes sir.

Q. Did you keep any of those original lists?

A. I kept them up to October last, and when we had just moved to where I am at present, my wife asked me if I wanted about a half a bushel of stuff, I guess, and I said no, and I had it burned up in the furnace.

Q. All those lists you had were then burned up?

A. Yes the lists and correspondence.

Q. Now when you got these lists from Mr. Benson, you then proceeded to carry out the work of expediting some of these claims?

A. Yes sir, when the opportunity offered. I was very busy and I could not do a great deal of it.

Q. Do you mean to say you did it when not busy with other work?

A. I did, yes.

Q. Do it outside of office hours?

A. Some of it I did, yes sir.

Q. Worked nights?

A. Worked nights.

Q. Right in the office?

A. Right in the office.

Q. Tell us what you did?

A. I would get the cases out; I arranged the numbers in numerical order and took the cases out, and if I found a case that looked as though it was perfect I would lay it aside, and later ex-

323 amine it more carefully, and if I found it was all right I would approve it.

Q. When you say you found it was perfect, what do you mean by that; you mean to say it had a clear title and no liens on it?

A. Yes sir.

Q. And if you found it was all right and came within the law, what would you do; dictate the letter to the Commissioner?

A. I would write the letter and submit it to the Commissioner for signature.

Q. That is to say, those letters would state the application, I suppose?

A. Oh yes.

Q. And the number of the application?

A. The case was described.

Q. The case would be carefully described, and it was stated it was found correct?

A. Yes sir.

Q. Then the letter would state that it was passed, and a patent would be issued?

A. That it was approved, and a patent would be issued in due course.

Q. Those letters you would pass up to the Commissioner with your initial for his signature?

A. Yes sir.

Q. I do not understand that you were passing up any applications that were not perfect, with such letters?

A. If I did I am not aware of it.

324 Q. You never intended to?

A. No sir.

Q. And that was never any part of your arrangement with Benson?

A. No sir; I avoided all that purposely.

Q. Did you say that you sometimes found that the applications were defective?

A. A great many of them, yes.

Q. And you didn't pass up any such application as that?

A. No sir; they went to the files and in due course, or sometimes I would write to Benson and point out the defects.

Q. That is to say, if there was on some part of it taxes unpaid, or something like that?

A. Yes sir; some little legal defect, I would write him a line stating how to cure it.

Q. And then he would make an amended application?

A. No, not necessarily; just furnish the proof; whatever paper was required.

Q. Was not this putting through of these perfect cases done for other people in the office besides Benson?

Mr. BALDWIN: I object to that as immaterial and incompetent.

Mr. PLATT: I want to know what the custom was in the office.

Mr. CAMPBELL: There is no evidence it is wrong now, and it wasn't wrong as a matter of law.

325 Mr. PLATT: I want to show what the practice in the office was in regard to it.

The COMMISSIONER: There might be any kind of a custom in the office.

Mr. BALDWIN: I have no objection to giving the custom of the office in the due course of business.

Mr. PLATT: On cross examination, I can do it in my own way, I insist upon asking my question.

Mr. BALDWIN: I object to it in that form.

The COMMISSIONER: All right, I allow it.

A. Yes sir.

Q. Was that frequently done?

A. No sir.

Q. Was it done sometimes with the knowledge of the Commissioner?

Mr. BALDWIN: I object to it.

The COMMISSIONER: Of your knowledge.

Mr. PLATT: I ask him if it was done by the Commissioner. I don't think it is necessary to indicate that. I don't want to ask him to testify to anything out of his own knowledge, and I don't assume he is going to, for a moment.

The COMMISSIONER: I will sustain the objection if you don't want his own knowledge.

326 Mr. PLATT: I have not stated I wanted anything out of his knowledge.

The COMMISSIONER: Go on.

Q. (Question repeated?)

A. No sir, none of those cases.

Q. None of what cases?

A. These that I had.

Q. No; I am speaking now about other people?

Mr. BALDWIN: That cannot possibly be competent here, what other people may do. It might be an entire violation of all the rules of the office and yet it couldn't substitute anything that is in issue here.

The COMMISSIONER: I will sustain the objection.

Exception taken.

Q. Didn't the Commissioner sometimes order that particular cases should be put through?

A. On some occasions he would make cases special himself.

The COMMISSIONER: Mark them special?

Mr. PLATT: He would sometimes make cases special himself.

Q. Didn't the Commissioner sometimes make some of the cases that were represented by Mr. Benson, special?

Mr. BALDWIN: Objected to as incompetent and immaterial.

327 Objection overruled.

A. Among the cases that Mr. Hermann had made special at different times, I found some that Benson was interested in and Mr. Hyde, and others.

Q. When these cases came in, or when these applications came in, that application was accompanied with an abstract and with a deed, was it not?

A. No sir; sometimes previous they would send up large deeds, what we called a blanket deed, covering 10,000 acres or more, and applications would follow based on that deed.

Q. But there was always in the office——

A. Basis, yes sir.

Q. There was always a deed of base lands with every claim in accompanying the application, or had been filed, to which the application referred?

A. Supposed to have been, yes sir.

Q. But each application carried with it an abstract?

A. Yes sir. Not necessarily that. The abstract would come with the deed originally.

Q. But there would in every case, where an application came in, if it was in accordance with the practice of the office, there would be a deed and an abstract to which the application had reference?

328 A. If not, the application would refer to the deed and abstract filed previously.

Q. If it didn't come with it, it would refer to such papers as that on file?

A. Yes sir, that is right.

Q. But these applications received numbers as they came in?

A. They were docketed and numbered.

Q. And as they were found perfect they would be passed up?

A. Yes sir.

Q. Sometimes when they were found imperfect they would be laid aside?

A. Laid aside for correspondence through the proper channel.

Q. If you found a defect in examining one of these applications, you would either correspond with the applicant or his lawyer, with a view to having them perfected, or you would lay them aside?

A. In some instances if the lawyer should send one through the local office in the State or Territory.

Q. These applications used to come in through the local office?

A. Yes sir.

Q. An application would be filed in the local State office?

A. Yes sir.

Q. You mean a Government land office in the State?

A. Yes sir.

329 Q. And then they would be forwarded from the local office to the general office at Washington?

A. Yes sir.

Q. And they would receive their numbers when they came into the general office?

A. Yes sir.

Q. And when they came in they would go to the index clerk and be distributed by him to the divisions?

A. Generally came to me first.

Q. And then they would be docketed?

A. Yes sir, and put on the files.

Q. And then they would be taken up, and if found perfect they would be passed?

A. Yes sir.

Q. And such a letter as you have described would be written?

A. Yes sir.

Q. If found imperfect there were three things you could do: Lay them aside entirely, or correspond with a view to having them corrected, or reject them?

A. Yes sir.

Q. And when one was laid aside in that way you would take up another?

A. Yes sir.

Q. And when one about which you had corresponded had been perfected or attempted to be perfected, you would take that up again?

A. Yes sir.

Q. And sometimes they would be marked special?

A. Yes sir.

330 Q. When did you first tell any officer or special agent or the Secretary or any superior officer of the Department of the Interior, about this arrangement which you had with Benson?

A. When did I first do it?

Q. When did you first tell anybody about it?

A. I think it was last December, sometime.

Q. Last December?

A. I think so.

Q. 1903?

A. 1903.

Q. Do you fix the date?

A. No, I cannot fix the date.

Q. Approximate it?

A. In the fore part of December, I think.

Q. It was before the 16th of December when you had your conversation with him?

A. Yes sir.

Q. You had never told anybody about it before, before that?

A. Before I had my conversation with Benson?

Q. No; up to the time of this conversation you mention?

A. No.

Q. To whom did you talk then?

A. I first talked to the chief clerk of the office.

Q. Who was that?

A. Mr. Macy.

Q. Did he ask you about it, or did you go to him?
A. I went to him.
Q. Why did you do that; what induced you?

Mr. BALDWIN: I object to that as immaterial.
331 The COMMISSIONER: We had it from the other witnesses.

A. I was persuaded to do it.
Q. Persuaded by whom?
A. Well, my wife and mother.
Q. You had talked with them about it and they persuaded you to do it?
A. Yes; my wife specially.
Q. You had not been asked at that time to give any testimony about it?
A. I had, and denied it on several occasions.
Q. Then you had spoken on the subject with somebody?
A. I had spoken to Mr. Burns and Mr. Pugh.
Q. They had asked you to tell about it, and you had declined to do so?
A. Yes sir.
Q. When did you first speak with either of those gentlemen or they with you, about the subject?
A. I say I think that was in the early part of December; the first week or second week of December, something like that.
Q. That was the first time that you had been asked to give testimony or make any statements on this subject?
A. I think so; I was sent for to appear before both of them or one.
Q. Now tell us what took place on the first occasion?

Mr. BALDWIN: I object to it as incompetent and immaterial.
332 Conversations he had with them are utterly incompetent. It is the same question we had before. What is the proper method of testing the person's knowledge or accuracy, and what is the proper method of contradicting them. Now I say there is no foundation for this kind of examination as to what occurred between them there. It is not pertinent to anything of the kind I asked anyhow. It is not the proper kind of evidence to impeach a person, and it is not the proper way, and it is not the proper way to test their credibility anyway, nor is it pertinent to anything that has been raised by the Government in this direct examination. There must be a limit to this. The question is Did you at a certain time say so and so. Otherwise it is incompetent.

Mr. PLATT: He has testified on the 16th of December, he had a conversation which he has related here with Benson, and he has testified that he had that conversation at the instance of Mr. Burns and Mr. Pugh, I think, or some of these gentlemen.

Mr. BALDWIN: No.

Mr. CAMPBELL: Yes, he did.

Mr. PLATT: He has testified that he did it.

333 Mr. CAMPBELL: He testified he took the money back as per arrangement.

The COMMISSIONER: I allow it. Go ahead.

Q. (Question read.) The first time that anybody approached you, or you approached anybody on this subject of this Benson business that you have been talking about here to-day?

A. When engaged on my duties at the office I was notified I was wanted to be seen in a certain room, and I went down. I think Mr. Burns was there with a typewriter and stenographer, and Mr. Burns proceeded to question me with reference to my connection with the Benson cases, &c.

Q. His questions and your answers being taken down by the stenographer?

A. Yes sir.

Q. Now give us the substance of what occurred there at that time?

A. I told him just what I have stated to Mr. Baldwin.

Q. You misunderstood me a little. I want you to go back to the time when you were asked or importuned to make statements and said you would not?

A. Oh, I wouldn't give them any statement, and a good many questions were asked me which I denied.

Q. I think we are a little confused. You have stated just now that you did state to Mr. Burns and to the stenographer just

334 what you have stated here. Now I want you to go back to the very first time that anybody came to you or approached you on this subject, and state what occurred?

A. My intention was to convey the idea that I eventually made the same statement to him after I had seen the chief clerk.

Q. Now go back to the very first occasion when anybody came to you. Who was it?

A. I think a colored man was sent up there.

Q. I don't mean a messenger, but I mean the first time that anybody questioned you?

A. I think Mr. Burns was the first one.

Q. Where did that take place?

A. In a room in the General Land Office.

Q. Did he have a stenographer there then?

A. I think he did.

Q. What took place then?

A. Well, he had before him a great many cases in which Benson was interested or supposed to be interested in, and questioned me with reference to their expedition and why they were taken out of the files of regular order, and on that line, and why I did it, and all those things, and I explained the best I could and he asked me other questions following up to the point he wanted to make whether I had received any money for doing that work, or words to

335 that effect.

Q. What did you tell him?
A. I told him I didn't; I hadn't.
Q. When was that?
A. That was the early part of December.
Q. Was that about all that took place at that first conversation?
A. That is about all.
Q. Now you testified about a second time?
A. No; pardon me. He did not question me about my relationship with Mr. Harlan also.
Q. Did you tell him about that?
A. I denied that I had any knowledge of his affairs.
Q. You didn't tell him at that time about this conversation you had in 1897?
A. No sir.
Q. Now when was the next?
A. Oh, a few days afterwards.
Q. Is that the conversation which you——
A. I think the next day.
Q. So that then you had made up your mind to tell him about it?
A. No sir.
Q. What took place the second time and where was it?
A. It was in the same office, in the same room, and I think Mr. Pugh was present then, and they questioned me with reference to certain cases, and wanted explanations how and why they were passed, and whether I knew that Benson was interested in
336 them, and all those things which I denied.
Q. Was that all of that second conversation?
A. Yes, sir; I had probably a half dozen conversations before I concluded that I would tell the chief clerk, which I did.
Q. Then you went to the chief clerk and told him about it?
A. Yes sir; I told him I would like to have a private talk with him. We went in the acting Commissioner's room, who was out, and had a few words simply, and then I said I would like to see Mr. Burns.
Q. You told Macy about it first?
A. Yes; just a little.
Q. And then he sent for Burns?
A. Yes sir.
Q. And Burns came in or you went down to his office?
A. I think I went down.
Q. Mr. Macy with you?
A. I think so.
Q. So that when you had this conversation you are going to relate, Mr. Burns was present, Mr. Macy, and a stenographer?
A. My impression is that the stenographer was not present then.
Q. You told Burns about your relations with Benson?
A. The stenographer was present later and knew all about it. I don't think he was there on that particular occasion; I won't be positive about that.

Q. And he questioned you about it, and you answered and
337 it was all then taken down stenographically?
A. Later, yes; not on that occasion.
Q. When later?
A. Probably the next day or somewhere along there.
Q. Was that the last conversation you had with Burns on the subject prior to the 16th of December?
A. No, we had frequent conversations about different matters; he would send for me at different times and question me.
Q. About the details?
A. Yes.
Q. Did you have any talk with Secretary Hitchcock?
A. No sir.
Q. You haven't talked with him at all?
A. No sir.
Q. Have you talked with anybody else in the department about the subject?
A. No sir.
Q. Did you talk with the Assistant Secretary?
A. No sir.
Q. Have you talked with any other official of the department besides Mr. Burns, Mr. Pugh and Mr. Macy?
A. No sir, not a soul.
Q. Have you talked with the acting Commissioner of the Land Office?
A. No sir.
Q. Who is the acting Commissioner?
A. John H. Fimple.
Q. Who is the Commissioner?
A. W. A. Richards.
Q. Have you talked with him about it?
A. No sir.
338 Q. Have you talked with Mr. Hermann about it?
A. Well, I had had a conversation with Mr. Hermann at the Capitol once about that investigation.
Q. When?
A. I think the latter part of December, 1903, or first of January, 1904.
Q. Did you have any talk with Mr. Hermann before the 16th of December?
A. No sir.
Q. When you went to see Mr. Benson at Willard's hotel on the 16th of December, had you previously had a talk with Mr. Burns about going there?
A. Yes sir.
Q. He knew you were going there?
A. He did.
Q. Did he go there with you to the hotel?
A. Yes, he went to the hotel with me.

Q. He was downstairs in the hotel at the time you were upstairs with Benson?

A. He was.

Q. And knew that you were up there?

A. Yes sir.

Q. And what had been your conversation with him on the subject of your going to Benson's room prior to your going there?

A. Captain Thomas came to my desk on the afternoon of that day about between one and three o'clock—I am not certain which—and beckoned me to come in the hall, and I went out and he told me Benson was over there and wanted to see me, and I said
339 Where and at what time, and he said the New Willard, and I presume at the office, so as soon as he left I thought over the matter, and I went down and told Mr. Burns.

Q. What time of day was that?

A. That was between three and four o'clock.

Q. You told him that Captain Thomas had come and asked you to go over to Mr. Benson?

A. Yes, sir; he told me that Benson wanted to see me.

Q. What did Burns tell you to do?

A. To go to see him.

Q. Did he give you any other instructions?

A. I said Benson is likely to offer me some money. If he does, shall I take it? He said, Yes, by all means.

Q. Did he tell you to try to get some?

A. No; he said if he offered it to me to take it.

Q. When you went there did you talk with Benson about money?

A. No, sir.

Q. Hadn't you previously written to Benson asking for money?

A. I had on one or two occasions.

Q. When had you written these letters?

A. I think in the fall; it was previous to this investigation some time.

Q. Did you tell him that you were in need of money?

A. I did; I think in one letter I asked him to lend me the money, if I am not mistaken, $500.

340 Q. What did you say to him about your needs for money?

A. I said I had gotten behind in stock speculation and needed some money or words to that effect.

Q. Did he respond to that letter; did he write you back?

A. He said money was short, or something of that kind, and he would be on later.

Q. He would be in Washington later?

A. Yes sir.

Q. Did you have that letter in mind at the time when you told Burns—or that correspondence rather with Benson, in mind at the time when you told Burns that Benson might offer you some money?

A. No, I did not.
Q. Did you tell Burns about that correspondence?
A. I think I did.
Q. You had already told him that you had written?
A. I told him I had written to Benson on two or three occasions and asked for money.
Q. Did you tell him you had written a short time prior to December, 1903, asking him to let you have money?
A. I think I did.
Q. Telling him about your personal interests?
A. Yes sir.
Q. You told that to Burns?
A. That is my impression now.
Q. Did you have a copy of the letter?
341 A. No, I didn't keep a copy.
Q. You only told him from memory?
A. Yes sir.
Q. Did Benson owe you any money for anything you had done?
A. I think he did, yes.
Q. What was it for that he owed you some money?
A. Some selections had been approved and had not been paid for; that was my impression, according to my figuring.
Q. Did Benson owe you money in July 1903?
A. Yes sir.
Q. The same money that you referred to in your last previous answer?
A. I could not say that particular amount.
Q. Well, you hadn't done any work for Benson, had you, since July, 1903; last July?
A. No.
Q. So that whatever he owed you in December, he owed you in July?
A. Whatever he owed me he owed me for work done previous to September, 1902.
Q. Is that your handwriting (showing)?
A. Yes, sir, it is.
Q. Is that the letter that you wrote to Benson on July 27th, 1903?
A. I think it is; there is no question about it.
Q. How much money did Benson owe you in December, 1903?
A. I could not state.
342 Letter marked for identification Defendant's Exhibit 3.
Q. Didn't you keep an account of it?
A. I kept an account of it, but all those papers were destroyed; I thought the matter was dead, and I could not tell.
Q. Did you tell Benson at that conversation in December, 1903, that he owed you money?
A. My impression is that I did not in that letter.

Q. You don't remember saying anything about that, do you, Mr. Valk?

A. I don't recall it now.

Q. Cannot you approximate; haven't you some idea of the amount that he owed you in December, 1903?

A. Well, I will say to the counsel my impression is it was over $400.

Q. Had you made any claim on him for that money?

A. I had written to Mr. Benson two or three times and I think on one occasion he wrote to me and said something about approvals being slow or something of that kind. That was shortly before my transfer.

Q. That was back in 1902?

A. Yes sir.

Q. Had you made any claim on him since that time?

A. Had I?

Q. Yes.

A. My impression is I wrote him one letter between that and this; I am not certain of it though.

Q. Did you specify any amount in that letter?

343 A. I think it was $200 or something like that; I couldn't say.

Recess until 2 p. m.

344 After recess.

WILLIAM E. VALK—cross examination continued.

By Mr. PLATT:

Q. Now you spoke about the letters which you wrote Mr. Valk, to Mr. Benson. As I understand you testified before ou. .oon recess that you wrote a letter in which you asked Benson to lend you some money?

A. I did.

Q. When did you write that letter?

A. I think July, 1903, some time.

Q. How much did you ask him to lend you?

A. $500, I think.

Q. Did he lend it to you?

A. He did not.

Q. Did you afterwards write him another letter?

A. I can't say that I did, but I may have done so.

Q. Didn't you write him a letter asking him if he would not lend you $100 in October?

A. 1903?

Q. Yes.

A. I may have done so.

Q. Don't you remember that a little while before you had this talk

with Benson in December, that you did write a letter to him asking him if he wouldn't lend you $100?

A. Well, it would not surprise me in the least if I did, because I was in financial distress then.

Q. Didn't he write to you in answer to such a letter
345 that he was coming to Washington?

A. He did, I think. Among other things in one of the letters I wrote him, I offered him security or something of the kind; offered him a note or something.

Q. And when he came to Washington in December, and you had that talk with him, didn't you speak to him about the letters you had written to him?

A. No reference was made to them.

Q. Didn't you so testify that you spoke to him and asked him whether he had received your letters?

A. No reference was made to any letters at all in that conversation. I am quite positive of that.

Q. You didn't ask him at all whether he had received your letters?

A. I might have said, well, you probably received my letters, or something of that kind.

Q. You didn't talk about what was in them, but you did ask him whether he had received your letters?

A. I may have done that, yes sir.

Redirect examination by Mr. BALDWIN:

Q. After the forest reserve section R was created in the General Land Office, you were then assigned to what is known as the contest division?

A. Yes sir.

Q. In the due course of business if a case came to you
346 where there was a contest, and it became necessary for you to look at any record or report or investigation concerning that particular case that was on file in section R or the forest reserve, would all those records, documents, &c. be open to your inspection?

Mr. PLATT: That is objected to. If there is any rule let it be produced.

The COMMISSIONER: I think you opened the door in your cross-examination a little bit.

Mr. BALDWIN: I think we have a right to show any how.

Mr. PLATT: Let the rule be produced, if there is any rule, and prove it in the proper way.

The COMMISSIONER: He can say whether there is such a rule.

Mr. PLATT: That is not the question. It is whether he could get at papers. Now if there is any rule that applies to this case, let it be produced.

The COMMISSIONER: Is there a rule?

Mr. BALDWIN: I think my question explains itself.

Mr. PLATT: I object to it as incompetent and irrelevant to prove any rule of the department.

Objection overruled. Exception.

347 A. Yes sir, I had access to any papers on file in the General Land Office appertaining to any case that was not made special by the Commissioner, or the officer in authority, and even to those if it had any bearing upon the case which I was examining.

Q. That is, any paper or document?

A. Any paper or document.

Q. Or report of an investigating officer or otherwise?

A. Yes; it made no difference what it was.

Q. Now referring again to the conversation had with Benson in the Willard hotel on the 16th or 17th of December, was anything said by you or by him about any moneys that he owed you?

A. No sir.

Q. When you first went in there what did he say to you?

Objected to as having been gone over.

Objection overruled. Exception.

A. Well, Mr. Benson began to question me with reference to the investigation and wanted to know how it was going respecting himself. I cannot say in detail, of course, but my responses I made satisfactory to him.

Q. What did you say to him about the investigation?

A. As I said before I told him his name was mentioned several times, and Mr. Hyde's frequently, and I thought they were
348 after Hyde and Hermann specially, and nothing had been divulged so far as he was concerned.

Q. What did you say about yourself?

A. I said I hadn't divulged anything.

Q. Did you say whether you had been before the investigating committee or not?

A. I said I had been before them several times.

Q. What did you tell him?

A. I told him I didn't divulge with reference to him; that is my impression now.

Mr. BALDWIN: Now will you let me have that letter?

Mr. PLATT: Do you ask me to produce the letter?

Mr. BALDWIN: Yes, in view of the fact that you have gone into some matters about the contents of this letter, I would like to have it.

Mr. CAMPBELL: There are some private matters in the letter of the man's own private business, and that is the reason we didn't put it in. I don't care. There are certain things about his family matters and business relations, and for that reason we didn't offer it. Now if they want it and put it in, we can't help it.

Mr. BALDWIN: It has been marked for identification and for the

purpose of clarifying what was in the letter I ask for it, and
349 if you don't put it in I will put it in myself.

Mr. PLATT: You are not entitled to it, of course?

Mr. BALDWIN: No; if they hadn't marked it for identification, and I don't say now I can compel them to offer it.

Mr. PLATT: I only marked it for identification as we were about to adjourn for lunch, as I thought some question might come up as to whether I had the same letter in my hands after lunch.

Mr. CAMPBELL: I think I will object to the letter on the ground that it is incompetent evidence. I don't want to refuse to produce it. Let the commissioner read it for his own information so it does not become a matter of record. There is no reason why this man's private affairs should be put in the record.

Mr. BALDWIN: You are showing a great deal of solicitude for a Government witness, it seems to me.

Mr. CAMPBELL: I always want to deal squarely with a man when he deals squarely with me.

Mr. BALDWIN: I shall offer the letter in evidence.

Letter marked Government Exhibit 1 of this date, reading as follows:

350 "MONDAY, July 27, 1903.

This is a rather unusual request, my dear B. I will admit, but I am in hard luck. Just lost "my all" through the "stock market" and am in search of some relief at least, to meet the demands of outstanding paper, which is pressing to the extent of "entering complaint," if I do not supply the same by the 12th proximo.

Have made some money out of the market but at the same time it has ended in placing me in a position which I have never heretofore experienced.

Have sworn never to invest a dollar in the business in the future.

My object in writing this is to ask for a loan pure and simple, of 500 dols. for one year, for which I will give my note indorsed by persons who are well prepared to meet the demand in a case of default on the part of the principal. It is absolutely a worthy transaction and will be cared for when the time arrives.

I only wish to save myself under pressure and to preserve my credit. I should not have gone into the deal, but as I was in, felt
in duty bound to endeavor to protect. Will allow 10 % per
351 annum on the loan, and will forward interest monthly.

If something is not done during the interval, am afraid my long good standing in the office and maybe my office will be lost, thus leaving me with a wife and 5 little ones in the alert.

Do this for me and I will endeavor to do anything in reason and proper for you so long as I live. Can take care of the matter by making monthly deposits, and thus gain relief from pressure and threats.

Let me hear from you at once and if the money is forthcoming I will enclose security referred to.

Yours sincerely, WM. E. VALK."

Q. When this act of 1897 went into effect, you had charge, did you not, of the particular business of the Land Office referring to Government lieu lands?

A. That was assigned to me in the first case.

Q. In the due course of business when claims came in was there or was there not numbers—serial numbers—assigned to the claims?

A. Yes sir.

Q. When they came in were they numbered?

A. Yes sir.

Q. Who instituted that method of numbering?

A. I did.

352 Q. You did that yourself?

A. Yes.

Q. Now in the due course of business assuming that an application was right, how were the cases taken up; seriatum or otherwise?

Mr. PLATT: That is objected to. If there is any rule or regulation about it, that is the best evidence.

The COMMISSIONER: How was it taken up. I overrule it and give you an exception.

A. Under departmental as well as bureau regulations they were to be taken up in regular order.

Q. Was there a rule?

A. I am not certain whether it is in print; my impression is that there is a print, but there was an understanding, a verbal rule anyhow.

Mr. PLATT: I move to strike that out.

Mr. BALDWIN: There is no law that covers these regulations about the method of doing business in the office, to be in writing. There are two ways of establishing it. One by a custom obtaining in a department for a period of time, or it may be in writing or verbally by the head of the department. Now I think he has a right to say what was the method of conducting the business, and if it was pursuant to the rule or regulation given verbally, he has a

353 right to state it.

Mr. PLATT: There is a law that all the conduct of the office shall be done by regulation.

The COMMISSIONER: If there is a regulation, it is the best evidence.

Mr. BALDWIN: There might be a regulation, but it may be verbal as well as in writing.

Mr. PLATT: No.

Mr. CAMPBELL: There is a regulation requiring it to be approved by the Secretary.

The COMMISSIONER: Was it a written regulation or direction you received from the head of the department.

The WITNESS: I have been in the office 25 years to-day, and it was always understood that cases should be taken up in regular order.

Mr. PLATT: Never mind that.

The WITNESS: I am answering the judge, my friend.

Mr. PLATT: I object to your doing it.

The WITNESS: Then I shall cease.

Mr. PLATT: Now the witness must not try to force testimony in here. I know he don't intend to, but I am only telling him he mustn't do it.

354 The COMMISSIONER: If it was a regulation, that is one thing, but if directions from the head of the department that is another, and under the statutes that would make it law, of course.

(By Mr. BALDWIN:)

Q. Did you ever see a written regulation as to how the method of the examination and passing upon the claims should be carried out?

Mr. CAMPBELL: Now there is another objection to it, and that is that we are not here to answer any charge of that kind. It has nothing whatever to do with this proceeding.

Mr. BALDWIN: They went into it fully on cross examination.

The COMMISSIONER: It strikes me you went into it.

Mr. CAMPBELL: They opened it up themselves. We confined ourselves particularly with this witness to cross examination of what he testified to and very short at that. Now we are not here to answer any charge of having this man taking cases up out of the regulations. The Government has seen fit to put that in another indictment, and if they want to fish for evidence under that indictment, this is not the place to do it. If they want to get evidence for the other indictment, that is one thing. Now we are here

355 to answer one particular charge, and that is bribing these people, and it is alleged under oath that Benson paid this man and this other man who is by the way, violating the order of this court.

The COMMISSIONER: Who is?

Mr. CAMPBELL: Mr. Harlan.

The COMMISSIONER: No, because he is through.

Mr. CAMPBELL: He is not through. I asked you not to allow him to go away until we got through with him.

Mr. PLATT: I except to that ruling that he shall stay here in this room.

Mr. PUGH: This is matter of discretion with the court anyhow.

Mr. PLATT: No; it is absolutely a statutory provision.

Mr. BALDWIN: I will say possibly I am responsible for Mr. Har-

lan. When he came in he asked me after he had testified, if there was any objection to his sitting here, and I said no. Now let him step out.

(The witness Harlan then retired from the room.)

The COMMISSIONER: I am going to allow this question and give you an exception.

356 Q. (Question read.)

A. My impression is that I have seen such a regulation.

Q. Who established the practice of numbering these claims as they came in?

A. I did.

Mr. PLATT: Objected to.

The COMMISSIONER: Was that by regulation?

The WITNESS: I had answered that question some time ago.

Mr. PLATT: Now that he has stated there was a regulation the testimony in regard to what it is should be covered by the regulation itself.

The COMMISSIONER: If the regulation provides for that we will have to have the regulation.

Q. In the practice that obtained in the office the respective claims were to be taken up in due course of business according as they were received, and bore a serial number; is that right?

Mr. PLATT: That is objected to. They can't prove the practice, if there is a regulation.

Mr. BALDWIN: He doesn't say there was one. He has a recollection he has seen one.

Mr. PLATT: It is objected to as incompetent and irrelevant.

357 The COMMISSIONER: If it is a regulation, that is the best evidence.

Q. Now Mr. Valk, when did you see such a regulation, if at all?

A. Some years ago; a great many years ago.

Q. Did you ever see any regulation in print or in writing of how these claims should be numbered, and how they should be filed, and how they should be acted upon, after the act of 1897 went into force?

A. After the act, no sir, I have never seen anything since then.

Q. Then the practice of numbering and the practice of examining and acting upon them was a new course of business that was established there after the act of 1897 went into effect?

A. Yes sir.

Q. Who established it?

A. I did.

Q. Now in due course of business under the practice, that you established were these claims often taken out of their order, or should they have been acted upon according to the time they were received, and the serial number that they bore?

Mr. PLATT: I object to that as a conclusion of the witness; calling for a conclusion of the witness.

The COMMISSIONER: He is the man that established this
358 practice, and he is asked whether it could be done and I allow it and give you an exception. Answer the question.

Exception taken.

A. That is why——

Q. Now answer that question?

A. I am going to, yes.

Q. It is a very plain question. (Question read)?

A. Acted upon in the time of the receipt.

Q. That is in due course of business they should be taken up seriatum?

A. Yes sir.

The COMMISSIONER: Do you want to exclude this witness from the room?

Mr. CAMPBELL: No; I don't think we want to examine him any further.

WILLIAM J. BURNS, sworn on behalf of the Government, testified as follows:

Examined by Mr. BALDWIN:

Q. Mr. Burns, what position, if any, do you occupy under the Government?

A. I am secret service agent of the Treasury Department, but specially detailed and have been appointed as special agent to the Interior Department.

Q. For what purpose?

359 A. For the purpose of making land fraud investigations.

Q. What do you mean by land fraud investigations?

A. Well, particularly the investigations relating to Hyde and Benson.

Q. Well, you mean investigations concerning Hyde and Benson in the lands which they had exchanged with the United States for what is known as forest land?

A. Yes sir, forest lieu land selections.

Q. When were you specially detailed to make that investigation?

A. On May 1st, 1903.

Q. And been conducting it in these cases?

A. Ever since.

Q. Were you interested with any other persons in making that investigation?

A. Mr. Pugh.

Q. Who is Mr. Pugh?

A. He is an attorney ofthe Interior Department.

Q. During the course of your investigation, were you required to make reports?

A. No sir.

Q. Did you at any time ever make a report?

A. Several verbal reports to the Secretary. Yes, I did make a report, yes.

Q. That is what I wanted?

A. Oh yes, I made a report to the Secretary of the Interior.

Q. That is, concerning the transactions or alleged transac-
360 tions of the defendant Benson with these forest reserve lands or lieu lands?

A. Yes sir.

Q. The report that you made, was that a secret report?

Mr. PLATT: Objected to.

Mr. CAMPBELL: He has testified he made only a verbal report.

The WITNESS: No; I made a written report.

Mr. CAMPBELL: After May, 1903?

The WITNESS: Yes.

Mr. PLATT: It is a conclusion of the witness, and I don't think he has a right to characterize the report.

Objection overruled. Exception taken.

Mr. PLATT: I object to it as incompetent and calling for a conclusion of the witness.

Objection overruled. Exception.

A. Yes sir, it was a secret report made to the Secretary of the Interior.

Q. Does that report which you filed with the Secretary of the Interior concern the defendant Benson, yes or no?

Mr. PLATT: That is objected to. He cannot prove the contents of the report by anything.

The COMMISSIONER: I think the report itself is the best evidence. You cannot go into the report.

361 Mr. PAGIN: The witness has stated this was a secret report

The COMMISSIONER: Yes, but the report itself is the best evidence. It isn't worth while to argue it. I will sustain the objection.

Mr. BALDWIN: In order to have the record clear, I will ask another question on that line.

Q. Did that report, and did that investigation disclose that the defendant John A. Benson had been and was interested in lands which had been obtained illegally from the United States?

Mr. CAMPBELL: That is objected to upon a great many grounds.

The COMMISSIONER: Objection sustained. It is going into the contents of the report. He might state the facts on which he based that.

Q. I understood you to say that your investigation generally had concerned—I am not asking for the report—had concerned the connection of John A. Benson with obtaining a large amount of land in conjunction with one Hyde, of what is known as forest reserve lands?

Mr. PLATT: Objected to. That is not proper to prove the
362 relations of the parties in this way, and I would like to ask the witness a question or two.

(By Mr. PLATT:)

Q. You say that you were detailed to the work which you were doing, Mr. Burns, on May 1st, 1903?

A. Yes, sir.

Q. Prior to that you were at your duties as special agent of the Treasury Department?

A. Yes, sir.

Q. And then you went over into the Interior Department under a detail?

A. Under an appointment.

Q. Appointment from whom?

A. The Secretary of the Interior.

Q. And was that appointment in writing?

A. Yes, regular appointment made out in the regular way.

Q. And that stated what your work was to be?

A. Yes, sir.

Mr. PLATT: That is the best evidence of what his work was to be, Mr. Commissioner, and it ought to be produced.

The WITNESS: I do not think it stated specifically what my work was to be; simply that I was a special agent. What I was to do was verbal instructions directly from the Secretary.

Q. Didn't you get any written instructions from the Secretary?

A. No, sir, none except my appointment as a special agent.
363 The only instructions given were verbal instructions from the Secretary and the Assistant Secretary.

Mr. PLATT: Now I do not think it is competent for him to answer the question that Mr. Baldwin asked, and I object to the question as calling for incompetent testimony, and a conclusion of the witness. The most that he could ask, and I am not sure that he could ask that, would be what the Secretary instructed him to do, and I do not think that would be competent; that it would be hearsay.

Mr. BALDWIN: I am asking what he did do.

The COMMISSIONER: I allow it, and give you an exception.

Mr. PLATT: I object to the question as leading.

Objection overruled. Exception.

(By the COMMISSIONER:)

Q. What did you do?

Objected to.

Mr. BALDWIN: I am willing to limit it down to the question.

(By Mr. BALDWIN:)

Q. Did the investigation that you made, or did you make an investigation rather, concerning the defendant Benson's connection or alleged connection with the obtaining of Government lands, or what are known as lieu selection lands in exchange for
364 lands within the forest reserves, from 1897 down to the date of your report, yes or no?

Mr. PLATT: I object to that as incompetent and irrelevant, and calling for hearsay, and the conclusion of the witness.

Objection overruled. Exception taken.

A. Yes sir, I made such an investigation.

Q. What period of time was covered by your investigation?

A. From May 1st until the present time, but my report was made to the Secretary, I think, about November, if I am not mistaken.

Q. This last year?

A. This last year, yes sir.

Q. And your investigation of the defendant Benson's connection with these lands embraced what year?

Mr. PLATT: That is objected to.

Mr. CAMPBELL: That is calling for the report.

The COMMISSIONER: No; he asked him what he investigated outside of the report.

A. 1897, 1898, and I think up to 1902; up to and including 1902.

Q. To whom did you make your verbal report from time to time?

A. Always to the Secretary and nobody but the Secretary himself.

365 Q. The Secretary of the Interior?

A. The Secretary of the Interior.

In the case of the United States against Benson on the conspiracy charge, the case is called, and is adjourned to Friday of this week at one o'clock.

Mr. BALDWIN: In this case we may take up 15 minutes on Friday, although I may rest it without putting in any further testimony.

Mr. CAMPBELL: In this conspiracy case you do not understand that the defendant is ready for his trial?

The COMMISSIONER: Oh, no. I have got to keep the examination open in the proper way.

Mr. CAMPBELL: The defendant cannot possibly get ready for trial inside of 60 days.

The COMMISSIONER: After the Government put in their case, you must have a reasonable time to put in your defense.

Mr. PUGH: We understand we are to take the testimony of the witnesses that are here?

Mr. CAMPBELL: Yes; then I would like to arrange to take
366 the evidence of our California witnesses in California.

Mr. BALDWIN: I do not know that we can do that. That question came up here not long ago before Judge Holt on the question of the right to take depositions out of the district.

Hearing adjourned to Friday, February 26th, 1904, at one o'clock p. m.

367 UNITED STATES
vs.
JOHN A. BENSON.

NEW YORK, February 26th, 1904.

Met pursuant to adjournment.

Present: The commissioner and counsel as before.

Mr. CAMPBELL: Before we adjourned last January, the counsel for the Government offered certain laws of California and Oregon. They offered certain sections, and we offer the entire chapters including those two sections. It is not necessary to have them here, I apprehend, but we offer the entire laws of California and Oregon in relation to the acquisition of State lands so far as they apply to the acquisition of State lands. We make that offer now, and they may be considered as in, I understand.

Mr. PLATT: Will your honor fix a time when we can argue the motion to dismiss the proceedings. We don't want to do it now because I am having some abstracts of testimony made which are not quite ready yet, and I think we could do it tomorrow.

Mr. BALDWIN: Are you going to put in any evidence?

Mr. PLATT: We are going to make a motion to dismiss the
368 proceeding on your case.

The COMMISSIONER: And put in briefs, I suppose, or have an argument. If I should decide against you on the motion, are you going to put in any evidence?

Mr. PLATT: I suppose we would not be obliged to decide that until the decision of our motion.

369 UNITED STATES
vs.
JOHN A. BENSON.

NEW YORK, February 27, 1904.

Present: The commissioner, and counsel as before.

Mr. PLATT: In case No. 1, I move to strike out Macey's testimony as to Harlan's duties with reference to special agents, that being a

conclusion of the witness and being in contradiction of the allegation of the indictment.

Second, I move to strike out Harlan's testimony, (Minutes p. 110 *et seq.*) as to the conversations and transactions with the defendant in 1897, '98 and '99, as not relevant to the charges before the Commissioner. That is the renewal of the motion on page 140 of the minutes.

I move to strike out all of Volk's testimony (page 253 *et seq.*) relating to the advancement or expediting of defendant's cases, as not relevant to the charges set forth in the complaint. The leave to renew was given at page 256 of the testimony.

The COMMISSIONER: I will reserve decision. I haven't had a copy of the notes yet.

370 Mr. PLATT: Now I move for the dismissal of the complaint against Benson in this first case.

Mr. Platt then proceeded to argue orally in support of his motion, was followed by Mr. Baldwin in opposition, and by Mr. Campbell in reply.

Decision reserved.

371 UNITED STATES *vs.* BENSON. } (Case No. 1.)

NEW YORK, March 1st, 1904.

Present: The commissioner, Mr. Baldwin, Mr. Platt, Mr. Campbell.

It is understood that the commissioner shall take up the motion to dismiss in this case and decide it, and in the meantime he adjourns this hearing until Monday, March 7th, at 10:30 a. m.; and that the defendant shall have a reasonable opportunty to produce his witnesses in case the decision is against the motion.

372 UNITED STATES *v.* JOHN A. BENSON. } Case No. 1.

NEW YORK, May 3, 1904.

Met pursuant to adjournment.

Present: The commissioner: General Burnett, for the Government; Mr. Platt, for the defendant; the defendant in person.

Mr. PLATT: The situation this morning is this: We desire to further examine Harlan and Volk, the witnesses who were formerly examined by the Government. When we adjourned here at the last time that testimony was taken in this case, the Government counsel from Washington, Mr. Pugh, went to California and took Mr. Harlan and Mr. Volk and the other Government witnesses, and they have been having hearings there under the conspiracy indict-

ment ever since that time, and they are still out there, those hearings not being yet finished, although the best of our information is that they will be finished today. Harlan and Volk are still out there, and we want to examine them further, particularly Harlan.

It appears from the testimony—from the examination of
373 Harlan in California—that there is further testimony to be obtained from him, and which was brought out from the Government side of the case particularly, matters of which we were ignorant when he was examined here before, and which is important for the defense as bearing on the truth of the statements which Harlan made *before you. From the* information that I have, it would seem that Harlan had made deliberate false statements, with the knowledge of the Government officers, at the time when he was before you. For instance, you will remember that he said that he wrote a letter to Benson on December 9th, in which he made an offer to Benson to produce certain papers—these papers that are a subject of this indictment—for money. Afterwards he reiterated that twice, both on cross-examination and on re-direct examination. When finally the letter was produced, it contained nothing of the kind. It was simply an invitation to Benson to come to Washington, and said nothing whatsoever about any offer of any kind. Now it appears in the testimony in the California hearing, that at the very time when Harlan was being examined here, the Government officers from Washington who had this matter in charge had in their possession a photographic copy of the letter, which had been taken before it was sent by Harlan at all, so that the contents
374 of it were known to them and were known to Harlan at the time when that examination took place, and those facts should be brought out.

Now, that is one of a number of facts bearing upon the character and credibility of the testimony that was offered here which ought to go before the commissioner on this question of probable cause.

Now, Harlan is out there. The Government officers there, who had to do with the matter and who were before you on these hearings, are still out there. We have told them we wanted Harlan here to be further examined. They knew the time when the hearing is set down, and I do not suppose that they could be here today. I presume, under the conditions out there they are not able to get here yet. We cannot go on without our testimony, and cannot go on until Harlan is produced as he should be, and we ought not to be asked to go on.

Further than that, Judge Campbell is still trying his case there, but is about through, and will get away, I think, tomorrow. Mr. Metson, his partner, started for here, but has been delayed on the trains, and won't be here until tomorrow morning. There are certain papers also which we need, a transcript of the papers, that are in Mr. Benson's trunk. He was to have been here yes-
375 terday or day before, but owing to delays on the roads, troubles with the trains, he did not get here until last night,

and his trunk has not arrived yet, but will be here tomorrow, I suppose.

Mr. BURNETT: Now, if the commissioner please, so far as Mr. Harlan is concerned, when he was on the stand he was examined, and cross-examined. He is said now to be in California. We cannot produce him, however much they desire to cross-examine him. That goes into the merits of the case. I take it that they could not secure his attendance by subpœna. I do not think that should enter into this consideration at all. What Harlan testified to, or what they desire to cross-examine him about, is past. They could not call upon us to produce him further. If he was allowed to leave the stand, and passed out of the jurisdiction of the court, he is beyond your honor's control, and may be beyond our control. I do not know how that is, but I do not think that should enter into this matter.

Now, as to this case, considering the fact that they have papers coming, if they will be ready to go on tomorrow morning with their case, I am willing that it should go over until tomorrow morning for that purpose. But I do not think the other matter is before your honor at all in any legal way.

Mr. PLATT: Do I understand the district attorney to take
375½ this position, they having produced testimony out there on the part of the Government which discredits their own witness, with the witness under the control of the Government, and whom it undoubtedly can produce, that it will stand on the technicality that we cannot subpœna him? Is that the district attorney's position?

Mr. BURNETT: The District attorney's position is, first, we know nothing about that. I take it Mr. Platt has no personal knowledge, but has some information to that effect. This hearing ought not to be stopped by any such information. The witness has been here, and has been fully examined and cross-examined, and is now off the stand.

Mr. PLATT: Tomorrow morning I will produce a certified copy of the record, to show that my statement is true.

The COMMISSIONER: I think, so far as the bribery case is concerned, that was submitted to me, and I have denied your motion. Now, if you want to put any defense in, I will give you until tomorrow morning to do it.

Mr. PLATT: We do want to put in a defense, and I want to examine Harlan. I call on the district attorney to produce Harlan here, and I am entitled to have him produced.

376 The COMMISSIONER: He was examined, and cross-examined, and left the stand.

Mr. PLATT: But since he was examined facts have been developed. It appears that at the time they had this paper in their possession. Now, I want to produce that fact. It is a most important fact to have.

The COMMISSIONER: I think, so far as the *prima facie* case is concerned, the bribery case is closed. Now, as to the other case——

Mr. PLATT: Do you mean to say I cannot call Mr. Harlan?

The COMMISSIONER: You can call him, yes, if you want to.

Mr. PLATT: That is what I want.

The COMMISSIONER: Make him your own witness, but I am not going to postpone this case for all time to produce him.

Mr. PLATT: I don't care whose witness he is. I want him here.

Mr. BURNETT: You can't get him here.

Mr. PLATT: A subpœna does not run out of the district. The district attorney insists I shall get him here, when he knows I can't have a subpœna that will have any effect, and when he knows *he* can produce him.

377 Mr. BURNETT: No, I do not know that.

Mr. PLATT: I will call Mr. Wilkie to the stand now, and we will see about this.

JOHN E. WILKIE, sworn on behalf of the defendant, testified as follows:

Examined by Mr. PLATT:

Q. What is your business?

A. Chief of the secret service division, Treasury Department.

Q. Is this Benson case under your charge?

A. No, sir.

Q. Do you have nothing to do with it?

A. I would not say that.

Q. You know about it, do you not?

A. I know some things about it.

Q. Are not the special agents there engaged in the case, under your charge?

A. No, sir; they are working under the direction of the Secretary of the Interior.

Q. Entirely disassociated from you?

A. Entirely disassociated, and paid by the Interior Department.

Q. Do you know where they are now?

A. Yes.

Q. Where?

A. In San Francisco.

Q. Do you know where Harlan is?

A. I do not.

378 Q. Have not you any information on that subject?

A. None at all.

Q. Do you know where he has been lately?

A. I assume from what I have seen in the San Francisco papers he has been in court in San Francisco.

Q. And that is all you know about it?

A. That is all I know about it.

Q. Is he still employed by the Government?
A. I cannot say.
Q. You have no information on that subject?
A. No, sir.
Q. Is that literally true, Mr. Wilkie, that you have no information on that subject?
A. Absolutely true, Mr. Platt.
Q. Do you think there would be any difficulty in the district attorney producing Mr. Harlan, if he wanted to, here in a few days?

Mr. BURNETT: You need not answer that. I object.

Q. You know about whether a Government employee can be produced here by the district attorney?
A. I don't know anything about it, sir, I am sorry to say; I should think that was a legal question.

Mr. PLATT: Of course, Mr. Wilkie can evade and dodge if he wishes to.

The WITNESS: I am not evading or dodging. I am
379 willing to tell you anything I know, but I do not know that.

Mr. PLATT: I think you do know, Mr. Wilkie.

The WITNESS: I beg to differ with you. I am telling you what is the truth, as I know it.

Mr. BURNETT: Now, if Mr. Platt has any application to make on the ground of papers not being here and expecting them here tomorrow morning, I am willing to consent to its going over until tomorrow morning, until they can get them.

Mr. PLATT: The papers I have are a transcript of this record which I wish to produce. I do not suppose this transcript of the record is evidence here, but I wish to use it in order to show the necessity of producing Mr. Harlan here.

Mr. BURNETT: I do not think that has the slightest bearing on this hearing.

The COMMISSIONER: Now, what I want to get at is this: How about the conspiracy charge? The Government has not rested on that charge.

Mr. BURNETT: It may be when tomorrow comes we will rest in that case, on the evidence here. I cannot say as to that.

Mr. PLATT: Mr. Commissioner, I understand that this case out there is being finished today. That is the information we
380 have, and the best information we can get. We have tried to get these witnesses we want here. There is no doubt that the Government can produce the witnesses, and we ought to have the time until they get here. This is not a condition we have created in any way. These delays have not been due to anything we have done, or any desire on our part. We would have been ready to go on long ago, but the Government has all the time kept it so we could not go on. We cannot be in two places at once. You must remember the history of this thing. Benson held in Wash-

ington, bailed out, brought here, then held here, and an attempt made, while he is held here, to forfeit his bail in Washington. From beginning to end, the course of the Government has been such as you condemned yourself, and every man must condemn. Now these conditions, your honor, exist, and these delays have been entirely due to the conduct of the Government officers. Now they hold the witnesses we want out in California, and insist on our producing them here. It is not fair; it is not right to a defendant, and I ask to have this adjourned until Mr. Harlan can get here, and we can examine him further.

The COMMISSIONER: Mr. Platt, I think I have been pretty liberal in this case, in granting adjournments.

Mr. PLATT: I don't think you have granted any adjourn-
381 ments, except what you ought to.

The COMMISSIONER: I think I have. I have not got Mr. Hyde before me. I am trying Mr. Benson. He had no business to go to California.

Mr. PLATT: It was understood by the Government officials at the time we adjourned that Mr. Benson was to go to California, to look after this case.

The COMMISSIONER: That is all right, but since that I have been liberal in adjournments. I have no anxiety to put Mr. Benson to trouble, but I want this case closed, and I don't want to work all summer at it.

Mr. PLATT: You don't want it closed by an act of injustice to this defendant?

The COMMISSIONER: No, but they have known these last two weeks that this case was going on today.

Mr. PLATT: And in that ti.. ve have made every effort possible to get these witnesses here, and to get the Government to bring these witnesses here.

Mr. BURNETT: The defendant cannot use the Government to bring these witnesses. There may be injustice about it, but there are legal rules that must be observed.

Mr. PLATT: The Government is holding the witnesses out there.

382 Mr. BURNETT: No; I am advised by the Attorney General that is not so, and I have seen no evidence to the contrary.

Mr. PLATT: Have you information from the Attorney General that they are not holding Harlan and Volk out there?

Mr. BURNETT: No, I cannot say that.

Mr. PLATT: I think you have made a mistake in your statement.

Mr. BURNETT: The persons named are not those named by the Attorney General, but he says those persons are not being detained.

Mr. PLATT: Who? Harlan and Volk?

Mr. BURNETT: No.

Mr. PLATT: Those are the witnesses we want.

Mr. BURNETT: Those witnesses I do not propose to produce for you, and you are not capable of producing them, and therefore they

don't enter into this consideration. Now do you want to go over until tomorrow morning?

Mr. PLATT: No, I want to go over for a week.

Mr. BURNETT: That I shall oppose.

The COMMISSIONER: I will adjourn until tomorrow morning, at half past ten or eleven, to go on with the bribery case, or both cases if you want to.

383 Mr. BURNETT: What about the bond?

The COMMISSIONER: The bond is all right. There is no trouble about the bond; that keeps alive as long as the case is pending before me.

Mr. PLATT: We are in no better position tomorrow morning. Will you admit in evidence the certified transcript of the testimony out there?

Mr. BURNETT: I cannot say, until I see and know what is in it and what is the object of its offer. I should think probably not, but I cannot say until I see and know all about it. Have you any evidence you desire to offer?

Mr. PLATT: I desire to offer the testimony of Mr. Harlan. I have not him here this morning, as stated, because the Government detains him from being here.

Mr. BURNETT: I submit, that is no legal ground for any further delay.

The COMMISSIONER: I will adjourn the matter until 10:30 tomorrow morning.

Examination adjourned till Wednesday, May 4th, 1904, at 10:30 a. m.

384 UNITED STATES } Case No. 1.
vs.
JOHN A. BENSON. }

NEW YORK, May 4th, 1904.

Met pursuant to adjournment.

Present: The commissioner; General Burnett, for the Government; Mr. Platt, for the defendant; the defendant, in person.

Mr. BURNETT: In the bribery case, if your honor please, the Government has rested, and I don't know whether the defense has any evidence to submit.

Mr. PLATT: We have evidence that we wish to submit, but under the decision of yesterday we are prevented. We wish to submit the testimony of Harlan and Volk, but we are not prepared to submit it today, because the witnesses are held by the Government in California.

Mr. BURNETT: You have no evidence here to produce?

Mr. PLATT: No, we cannot produce it this morning. We ask for an adjournment until these witnesses can come here.

Mr. BURNETT: I object to that.

385 The COMMISSIONER: The evidence ought to be here, to close the bribery case. I have no evidence that these men will ever get here.

Mr. BURNETT: Then I will ask your honor to find in the bribery case and commit the defendant.

Mr. PLATT: I move to discharge the defendant, on the grounds that were presented to your honor on the motion that was denied, and also on the ground that there is no jurisdiction of the courts in the District of Columbia, in which the indictment was found, to try the case.

The COMMISSIONER: I deny the motion, and give you exceptions. I suppose that is a question that really has to be settled by the court. I will hold the defendant, to await a warrant of removal, on the bribery charge.

Mr. BURNETT: We are willing to let the matter go over until two o'clock.

Hearing adjourned until two p. m., same day.

(Endorsed:) U. S. circuit court, southern district of New York, Filed May 26, 1904. John A. Shields, clerk.

386 United States Circuit Court, Southern District of New York.

In the Matter of the Application of JOHN A. BENSON for *Habeas Corpus*.

This is a hearing upon writs of *habeas corpus* and certiorari. Defendant was arrested upon a warrant issued by a U. S. commissioner and after a hearing before that officer was committed to await the action of the district judge upon an application to be made by the U. S. attorney for a warrant of removal to the District of Columbia, for trial upon an indictment found by a grand jury of the supreme court of the District of Columbia. The charge is for several separate violations of the provisions of section 5451 U. S. Revised Statutes, which punishes with fine and imprisonment any person who promises offers or gives any money or thing of value to any officer of the United States with intent to induce him to do or omit to do any act in violation of his lawful duty.

LACOMBE, *Circuit Judge:*

It is now well-settled that the sufficiency of the indictment is to be determined by the court in which it was found and is not matter of inquiry in removal proceedings. Greene *v.* Henkel, 183 U. S. 249. Beavers *v.* Henkel, — U. S. —. This indictment avers that
387 defendant was engaged in fraudulent operations under the land laws, that under orders of the Secretary of the Interior an investigation of his alleged frauds was begun, that the investi-

gators were to report to the Secretary for the exclusive consideration and use of the proper officers of the department, that one Harlan was an officer of the department to whom such report would come, and that on a day named defendant gave a specified sum of money to Harlan with intent to induce him to reveal to defendant, when the same should come to his hands, the contents of the said report. The principal criticisms of the indictment are that it does not sufficiently aver that the report was one to be kept secret and confidential, and that it was Harlan's "lawful" duty not to reveal its contents to the individual whose malpractices it described, nor that since the report was not in existence when the officer was bribed, the offence charged could not be committed, because the contingency specified (the making of the report) might never happen. These objections, however, are to be determined, as above suggested, in the court which found the indictment;—on any ordinary and natural construction of its language it sets forth an offence under section 5451.

It has been held in Beavers *v.* Henkel — — U. S. that, in proceedings to remove, the indictment itself is *prima facie* evidence of the commission of the offence charged. In this proceeding no evidence was introduced by defendant controverting any of the averments of the indictment. The Government, however, called several witnesses and undertook to prove the offence independently of
388 the indictment. Defendant insists that their testimony falls short of establishing the necessary facts. It is unnecessary to go into any analysis of this proof: even if it failed in some particulars, that circumstance does not impair the credit of the indictment; *non constat* but what there was other and more persuasive evidence before the grand jury.

It is further contended that as to some of the counts the evidence shows that the offence was committed in California where the letter enclosing bribe was mailed not in Washington, D. C. where it was received. It is unnecessary to discuss this question here, since concededly the offenses charged in the other counts were committed in Washington.

Finally it is contended that under section 1014 there can be no removal to the District of Columbia. That section reads as follows:

"SECTION 1014. For any crime or offense against the United States the offender may * * * by any commissioner of a circuit court to take bail * * * be arrested and imprisoned or bailed, as the case may be, for trial before such court of the United States as *by law has cognizance of the offense* * * * and where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned, seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had."

This was originally (with a slight change which is con-
389 cededly of no importance) section 33 of the original judiciary act. At the time of its original enactment there was no District of Columbia, and the word "district" as used in the section applied to the appropriate "judicial district," viz: to one of the judicial districts into which by that act the United States was divided. Reliance is had upon the opinion of Judge Brown *in re* Dana 68 F. R. 898. That case, however, went off on the proposition that "libel in the District of Columbia does not belong to the class of offenses contemplated or provided for by section 33 or by section 1014, [since] * * * there has never been any statute either of the United States or of the State of Maryland making libel a criminal offense." The learned judge does discuss removals generally, but that part of the opinion is obiter. In the case at bar we have a crime or offense against the United States, and it is to be expected that, even if the language of the original section were not sufficient to include the District of Columbia, Congress has provided in some way against the extraordinary result of its legislation, whereby an individual who might commit murder upon the steps of the Capitol could live in undisturbed security provided he succeeded in getting beyond the limits of the District of Columbia before he was arrested. The act of 1871 (16 Stat. 426) now section 93 of the Revised Statutes of the District of Columbia has apparently provided for such a case as this. It reads:

"SEC. 93. The Constitution and all laws of the United States,
390 which are not locally inapplicable, shall have the same force and effect within the District of Columbia as elsewhere within the United States."

This places the District of Columbia, so far as practicable, on an equality of privilege with the various States and judicial districts of the rest of the country. One of the privileges of a judicial district is to have persons who within its borders offend against the laws of the United States returned from any other district to itself for trial before the appropriate Federal court sitting therein. That privilege is made practically available by section 1014, and by the act of 1871 the provisions of that section "have the same force and effect within the District of Columbia as elsewhere in the United States."

The writ is dismissed and defendant remanded to await the action of the district judge.

(Endorsed:) Circuit court of the United States, for the southern district of New York.—In the matter of the application of John A. Benson for *habeas corpus*.—Opinion, Lacombe, C. J.—U. S. circuit court, southern district of New York, Filed May 31, 1904, John A. Shields, clerk.

391 At a stated term of the United States circuit court for the southern district of New York, held at the U. S. court house and post office building, in the borough of Manhattan, city of New York, on the 31st day of May, 1904.

Present: Honorable E. Henry Lacombe, judge.

In the Matter of the Application of JOHN A. BENSON for *Habeas Corpus*.

A petition having been heretofore presented to me setting forth that the above named John A. Benson, was restrained of his liberty by William Henkel, United States marshal for the southern district of New York, and a writ of *habeas corpus* having thereupon on the 4th day of May, 1904, been issued commanding said William Henkel to produce said John A. Benson before this court; and the said William Henkel, having produced the said John A. Benson in obedience to said writ, and having filed a return to said writ dated the 4th day of May, 1904; and under and pursuant to an order of this court dated the 4th day of May, 1904, the cause of the imprisonment of the said John A. Benson with true copies of the proceedings, complaint, warrant, deposition, examination, determination, commitments and record had before John A. Shields, U. S. commissioner in and for the southern district of New York, in the matter of the United States against John A. Benson, charged with a
392 violation of section 5451 Revised Statutes, having been certified to this court, and the petitioner appearing by his attorneys, Boardman, Platt & Soley, and the return of the said William Henkel not having been traversed, and the matter coming on to be heard before me, on the 19th day of May, 1904,

Now, on reading and filing the above mentioned petition and return, and said record certified as aforesaid, to this court by the said John A. Shields, U. S. commissioner, and after hearing Frank H. Platt, of counsel for the petitioners in support of the petition, and Ernest E. Baldwin, assistant U. S. attorney, in opposition thereto, now upon motion of Henry L. Burnett, United States attorney for the southern district of New York, it is,

Ordered that the said writ of *habeas corpus* be and the same is hereby dismissed, and the said John A. Benson is hereby remanded to the custody of the said William Henkel, United States marshal as aforesaid, to await the action of the district judge for removal to the District of Columbia.

May 31, 1904.

E. HENRY LACOMBE, U. S. C. J.

(Endorsed :) U. S. circuit court, southern district of New York.—In the matter of the application of John A. Benson, for a writ of *habeas corpus*.—Order.—Henry L. Burnett, United States attorney, attorney for U. S.—Copy received, May 27, 1904. Boardman, Platt & Soley,—U. S. circuit court, southern district of New York, Filed May 31, 1904, John A. Shields, clerk.

393 United States Circuit Court, Southern District of New York.

In the Matter of JOHN A. BENSON.

A writ of *habeas corpus* having been obtained by the petitioner, John A. Benson, on the 4th day of May, 1904, returnable before the United States circuit court for said southern district of New York, and said writ having been dismissed and the petitioner remanded to custody by order of this court, dated May 31, 1904, and said petitioner having petitioned for an appeal to the United States Supreme Court from said order of this court, dismissing the said writ, and said appeal having been allowed;

Now, on motion of Boardman, Platt & Soley, attorneys for said petitioner and appellant;

Ordered, that the petitioner and appellant be enlarged upon his recognizance and admitted to bail pending said appeal to the United States Supreme Court in the sum of ten thousand dollars ($10,000.) and that the sum of ten thousand dollars ($10,000.) be deposited in the registry of this court in lieu and place of bail and in addition to the recognizance of the above named petitioner and appellant for his appearance before this court to abide the order of this court made upon the mandate of the Supreme Court of the United States upon the determination of his said appeal.

E. HENRY LACOMBE,
United States Circuit Judge.

394 Consented to.
HENRY L. BURNETT,
United States Attorney.

(Endorsed:) U. S. circuit court, southern district of New York, Filed May 31, 1904, John A. Shields, clerk.

395 UNITED STATES OF AMERICA, Southern District of New York, } ss:

Be it remembered, that on the 31st day of May, 1904, before me, John A. Shields, a United States commissioner for the southern district of New York, personally came John A. Benson, and acknowledged himself indebted to the United States of America in the sum of ten thousand dollars to be levied upon his goods and chattels, lands and tenements, if default be made in the condition following, to-wit:

Whereas, the said John A. Benson heretofore secured a writ of *habeas corpus* to inquire into the cause of his detention by the United States marshal and said writ has been dismissed by order of the United States circuit court for the southern district of New York, entered on the 31st day of May, 1904, and the said John A. Benson

has duly appealed to the United States Supreme Court from the said order of the said United States circuit court and said appeal has been allowed and the said John A. Benson has been admitted to bail in the sum of ten thousand dollars ($10,000), pending the determination of the United States Supreme Court upon said appeal, by order of the said United States circuit court this day made and the said sum of ten thousand dollars has been deposited in the registry of this court in lieu of bail;

Now, therefore, the condition of this obligation is such that if the said John A. Benson shall duly personally appear in the United States circuit court for the southern district of New York to answer the exigency and determination of said appeal and personally
396 abide the final decision and determination of the said Supreme Court of the United States and of said circuit court of the United States upon the mandates of the said Supreme Court of the United States and obey and abide the orders of said circuit court of the United States and not depart without leave upon the conditions aforesaid and upon the entry of said orders upon said appeals then this recognizance to be void, otherwise to remain in full force and virtue.

JOHN A. BENSON.

Taken and acknowledged before me the day and year first above written.

[L. S.] JOHN A. *BENSON*,
United States Commissioner.

Recognizance approved as to form and sufficiency.

E. HENRY LACOMBE,
United States Circuit Judge.

Approved:
HENRY L. BURNETT,
United States Attorney.

(Endorsed:) U. S. circuit court, southern district of New York, Filed May 31, 1904, John A. Shields, clerk

397 United States Circuit Court, Southern District of New York.

In the Matter of the Application of JOHN A. BENSON for Writs of *Habeas Corpus* and Certiorari.

Petition of Appeal.

John A. Benson, the petitioner above named, feeling himself ggrieved by the final order heretofore made and entered by this ourt in the above entitled proceeding, on the 31st day of May, 1904, dismissing the writ of *habeas corpus* heretofore granted herein

directed to William Henkel, United States marshal in and for the southern district of New York, requiring the said marshal to bring and have your petitioner before this court, and remanding this petitioner to custody to await the warrant of removal of the United States district judge,

Now comes, by Boardman, Platt & Soley, his solicitors and counsel, and petitions this court for an order allowing your said petitioner to prosecute an appeal from said final order to the Supreme Court of the United States, under and according to the laws of the United States in that behalf made.

Your petitioner is advised by counsel and believes that the proceedings referred to in the petition for the writ of *habeas corpus* herein have infringed the constitutional rights of your petitioner, and that the commitment of your said petitioner and the restraint of his person are without authority of law and that the said United States commissioner before whom your said petitioner
398 was arraigned, as set forth in said petition for the writ of *habeas corpus* above referred to, had no authority to issue warrant for the arrest of your said petitioner or to commit your said petitioner, and your petitioner desires in good faith to submit the constitutional questions and other questions involved herein to the Supreme Court of the United States for its determination.

And your petitioner will ever pray.

JOHN A. BENSON.
BOARDMAN, PLATT & SOLEY,
Attorneys for Petitioner.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

John A. Benson, being duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof, and that the same is in all respects true.

JOHN A. BENSON.

Sworn to before me this 31st day of May, 1904.
HENRY W. CLARK,
Notary Public, New York County.

The foregoing petition of appeal is granted and allowed and it is ordered that the petitioner, pending said appeal, be enlarged upon bail in the sum of ten thousand dollars.

Supersedeas bond fixed at $250.

Done in open court this 31 day of May, 1904.

E. HENRY LACOMBE,
U. S. Circuit Judge.

399 (Endorsed:) United States circuit court, southern district of New York.—In the matter of the application of John A. Benson

for writs of *habeas corpus* and certiorari.—Petition of appeal.—Boardman, Platt & Soley, attorneys for petitioner, No. 35 Wall street, New York city.—Please take notice that the within petition of appeal was duly allowed this 31st day of May, 1904, and filed in the office of the clerk of this court, and that the petitioner, John A. Benson, hereby appeals to the Supreme Court of the United States from the order designated in said petition. Boardman, Platt & Soley, attorneys for appellant. To William Henkel, Esq., U. S. marshal, John A. Shields, Esq., U. S. commissioner, Henry L. Burnett, Esq., U. S. attorney.—Service of a copy of the within petition of appeal and the above notice of allowance, this 31st day of May, 1904, is hereby admitted.—William Henkel, U. S. marshal, John A. Shields, U. S. commissioner.—A copy of the within paper has been this day received at this office May 3, 1904, Henry L. Burnett, U. S. attorney—U. S. circuit court, southern district of New York, Filed Jun- 1, 1904, John A. Shields, clerk.

400 Supreme Court of the United States.

In the Matter of the Application of JOHN A. BENSON, for Writs of *Habeas Corpus* and *Certiorari*.

Assignment of Errors.

The petitioner, John A. Benson, by Boardman, Platt & Soley, his attorneys, in connection with his petition of appeal to the Supreme Court of the United States from the final decision of the United States circuit court in and for the southern district of New York, entered herein on the 31st day of May, 1904, dismissing the writ of *habeas corpus* and remanding the petitioner to the custody of the marshal to await the action of the United States district judge, makes and files the following assignment of errors.

1. The court erred in dismissing the writ of *habeas corpus* granted herein on the 4th day of May, 1904.

2. The court erred in remanding the petitioner, John A. Benson, to the custody of the marshal to await the action of the United States district judge.

3. The court erred in not discharging the petitioner from custody.

401 4. The court erred in holding that the sufficiency of the indictment is to be determined by the court in which it was found, to wit: the supreme court of the District of Columbia, and is not a matter of inquiry in removal proceedings.

5. The court erred in not holding the indictment insufficient.

6. The court erred in not holding and deciding that the indictment charges no crime or offense against the United States.

7. The court erred in not holding and deciding that the indictment is insufficient in that it fails to set forth facts showing that

any violation of a lawful duty upon the part of Harlan and Valk therein named was involved.

8. The court erred in not holding and deciding that the indictment is insufficient in that it shows at most an inducement offered to Harlan and Valk, above named, to do an act which could be done by them only upon the happening of a condition or contingency which might never be fulfilled and which act, in any event, constituted an offense only upon the happening of a condition or contingency which might never exist or occur.

9. The court erred in not holding and deciding that there is no evidence of probable cause warranting the commitment of the petitioner.

10. The court erred in not holding and deciding that the evidence introduced before the commissioner in behalf of the
402 prosecution contradicted the indictment and destroyed the *prima facie* case of probable cause made by the indictment.

11. The court erred in not holding and deciding that the evidence introduced in behalf of the prosecution affirmatively shows that no offense against the United States was committed by the petitioner.

12. The court erred in holding and deciding that it was unnecessary for the court to make any analysis of the evidence.

13. The court erred in not holding and deciding that the offenses alleged in the indictment, if any, are shown by the evidence to have been committed in California.

14. The court erred in not holding and deciding that as to the offenses alleged in the first six counts of the indictment, petitioner is entitled, under the United States Constitution, article III, section 2, and under the sixth amendment to the Constitution to a trial in the State of California.

15. The court erred in not holding and deciding that the petitioner is, in any event, entitled to a trial in the State of California upon all the offenses alleged in the indictment.

16. The court erred in holding and deciding that section 1014 U. S. R. S. authorizes the removal of the petitioner from the southern district of New York to the District of Columbia.

403 17. The court erred in not holding and deciding that the District of Columbia is not such a District as is within the meaning of section 1014 U. S. R. S.

18. The court erred in not holding and deciding that section 1014 U. S. R. S. authorizes removal from one judicial district of the United States to another judicial district of the United States and that the District of Columbia is not a judicial district of the United States.

19. The court erred in holding and deciding that the act of February 21st, 1871, (16 Statutes at Large, 426; section 93, Revised Statutes, District of Columbia) extends the application of section 1014 U. S. R. S. to the District of Columbia to the extent of authorizing the removal of prisoners from a judicial district of the United States to said District of Columbia.

20. The court erred in not holding and deciding that the petitioner is unlawfully restrained of his liberty.

21. The court erred in not holding and deciding that the petitioner is deprived of his liberty without due process of law within the meaning of the fifth amendment to the United States Constitution.

Wherefore, petitioner prays that the said order dismissing the said writ of *habeas corpus* be reversed and that the court below
404 be directed to discharge your petitioner from custody.

JOHN A. BENSON, Petitioner,
By BOARDMAN, PLATT & SOLEY,
Attorneys for Petitioner.

(Endorsed:) Supreme Court of the United States.—In the matter of the application of John A. Benson for writs of *habeas corpus* and certiorari.—Assignment of errors.—Boardman, Platt & Soley, attorneys for petitioner, No. 35 Wall street, New York city.—U. S. circuit court, southern district of New York. Filed May 31, 1904. John A. Shields, clerk.

405 Supreme Court of the United States.

In the Matter of the Application of JOHN A. BENSON for Writs of *Habeas Corpus* and Certiorari.

Know all men by these presents: That we, John A. Benson, as principal, and the Fidelity and Deposit Company of Maryland, a corporation of the State of Maryland, having an office and principal place of business for the State of New York, at No. 35 Wall street, in the borough of Manhattan, in the city of New York, as surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars ($250.00) to be paid to the United States, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 31st day of May, 1904.

Whereas, lately, to wit, on the 31st day of May, 1904, at a circuit court of the United States, in and for the southern district of New York, in a proceeding therein pending, an order was entered dismissing the writ of *habeas corpus* theretofore obtained by the above named petitioner, and remanding said petitioner to custody, and said petitioner having duly obtained an appeal from the said order to the Supreme Court of the United States, and filed a copy thereof in the clerk's office of the said circuit court, to review the same;

Now, the condition of the above obligation is such, that if
406 the said petitioner, John A. Benson shall prosecute said appeal to effect and shall answer all costs if he shall fail to make the

said appeal good, then this obligation to be void; otherwise to remain in full force and effect.

JOHN A. BENSON. [SEAL.]
FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By HUGH M. ALLWOOD,
Attorney-in-fact.
[SEAL.]
Attest: JAMES R. KINGSLEY,
Attorney-in-fact.

Sealed and delivered and taken and acknowledged this 31st day of May 1904, before me.

[L. S.] JOHN A. SHIELDS,
United States Commissioner.

Approved as to form, amount and sufficiency.

E. HENRY LACOMBE,
United States Circuit Judge.

407 STATE OF NEW YORK, } ss.:
County of New York, }

On the 31st day of May, in the year 1904, before me personally came James R. Kingsley, to me known, who, being by me duly sworn, did depose and say, that he resided in the city of New York; that he is the attorney-in-fact of the Fidelity and Deposit Company of Maryland, the corporation described in and which executed the within instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided in section 3, of chapter 720, of the Session Laws of the State of New York for the year 1893. And the said James R. Kingsley further said that he was acquainted with Hugh M. Allwood, and knew him to be the attorney-in-fact of said company; that the signature of the said Hugh M. Allwood, subscribed to the within instrument, was in the genuine handwriting of the said Hugh M. Allwood, and was subscribed thereto by like order of the board of directors, and in the presence of him, the said James R. Kingsley.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

At a regular and lawful meeting of the board of directors of the Fidelity and Deposit Company of Maryland, at which a quorum was present, held at the office of the company, in the city of Balti-

more, State of Maryland, on the sixth day of March, 1901, on motion, it was unanimously

"*Resolved*, That in pursuance of section eight hundred and eleven "of the Code of Civil Procedure of the State of New York, Henry "B. Platt, vice-president, or George Sewell Bonner, attorney, or "Frank H. Platt, Edward T. Platt, Joseph A. Flynn, Hugh M. All-"wood and James R. Kingsley, attorneys-in-fact of this company, "in the State of New York, be, and each of them is, hereby author-"ized and empowered to sign, execute and deliver any and all "bonds or undertakings for or on behalf of this company, and to "attach thereto the seal of the corporation, the same to be attested "by the said George Sewell Bonner, attorney of the company, or by "either one of the other persons above named, as occasion may "require."

COUNTY OF NEW YORK, *ss*:

I, James R. Kingsley, attorney-in-fact of the Fidelity and Deposit Company of Maryland, have compared the foregoing resolution with the original thereof, as recorded in the minute book of said company, and do hereby certify that the same is a true and correct transcript therefrom, and of the whole of the said original resolution.

Given under my hand and the seal of the company, at the city of New York, this 31st day of May, 1904.

[SEAL.] JAMES R. KINGSLEY,
Attorney-in-fact.

Fidelity and Deposit Company of Maryland.

Statement, December 31st, 1903.

Resources.		Liabilities.	
Real estate	$670,000 00	Capital stock	$2,000,000 00
Stocks and bonds	2,756,858 00	Surplus and undivided profits	2,797,227 13
Railroad bonds	1,913,625 00	Premium reserve	701,278 18
Net premiums due	95,507 36	Claims in process of adjustment	46,490 98
Cash in bank, etc	351,276 86	Claims reported	242,270 93
	$5,787,267 22		$5,787,267 22

STATE OF NEW YORK, }
County of New York, } *ss*:

James R. Kingsley, being duly sworn, says that he is the attorney-in-fact of the Fidelity and Deposit Company of Maryland; that the foregoing is a true and correct statement of the financial condition of said company, as of December 31st, 1903, to the best of his

knowledge and belief, and that the financial condition of said company is as favorable now as it was when such statement was made.

JAMES R. KINGSLEY.

Subscribed and sworn to before me, this 31st day of May, 1904.

[SEAL.] ERNEST L. HICKS,
Notary Public, New York County.

408 (Endorsed:) Supreme Court of the United States.—In the matter of the application of John A. Benson for writs of *habeas corpus* and certiorari.—Bond.—U. S. circuit court, southern district of New York. Filed May 31, 1904, John A. Shields, clerk.

409 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to Hon. Henry L. Burnett, United States attorney for the southern district of New York; John A. Shields, Esq., United States commissioner for the southern district of New York, and William Henkel, Esq., United States marshal for the southern district of New York:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at the city of Washington, within thirty days from the date of this writ, pursuant to an appeal duly allowed by the circuit court of the United States for the southern district of New York, filed in the clerk's office of said court on the 31st day of May, 1904, in a cause entitled, "In the matter of the application of John A. Benson for writs of *habeas corpus* and certiorari," to show cause, if any, why the final order of said circuit court rendered against the said petitioner, as in said petition of appeal mentioned, should not be corrected, and why speedy justice should not be done to the petitioner in that behalf.

Witness the Honorable E. Henry Lacombe, judge of the circuit court of the United States, this 31st day of May, 1904.

E. HENRY LACOMBE,
United States Circuit Judge.

410 (Endorsed:) U. S. circuit court, southern district of New York—In the matter of the application of John A. Benson for writs of *habeas corpus* and certiorari—Citation on appeal.—Boardman, Platt & Soley, attorneys for petitioner, No. 35 Wall St. New York city.—A copy of the within paper has been this day received at this office. May 31, 1904. Henry L. Burnett, U. S. attorney.—Service of a copy of the within citation on appeal is hereby admitted, this 31st day of May, 1904. William Henkel, U. S. marshal, John A. Shields, U. S. commissioner.—U. S. circuit court, southern district of New York, Filed Jun- 1, 1904, John A. Shields, clerk.

411 UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from one to 410 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the cause entitled In the matter of the application of John A. Benson for writs of *habeas corpus* and certiorari as the same remain of record and on file in my office.

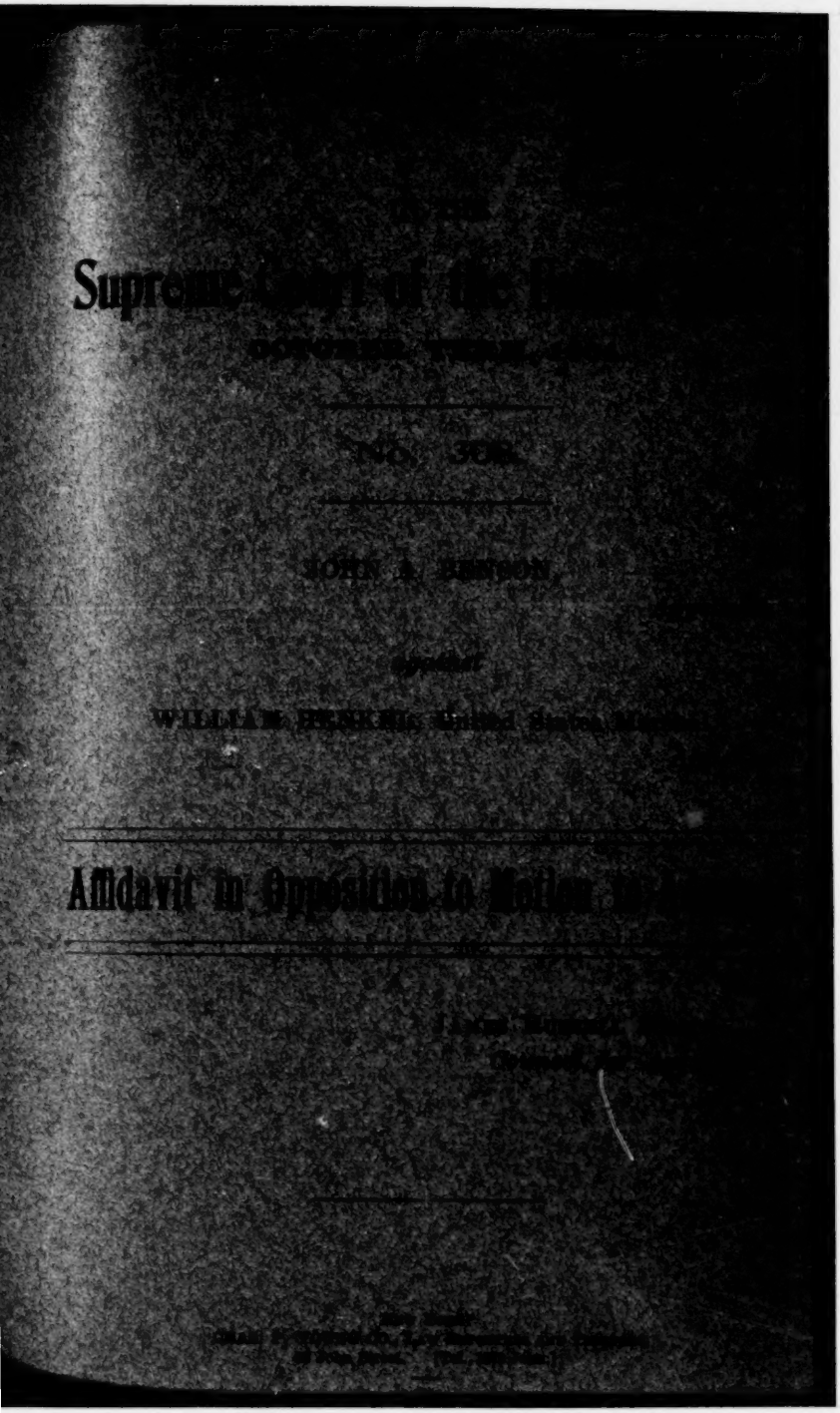
In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 28th day of June in the year of our Lord one thousand nine hundred and four and of the Independence of the said United States the one hundred and twenty-eighth.

[Seal of U. S. Circuit Court, South. Dist. New York.]

JOHN A. SHIELDS, Clerk.

[Endorsed:] United States circuit court of appeals for the second circuit. In the matter of the application of John A. Benson for writs of *habeas corpus* and certiorari. Transcript of record from the circuit court of the United States for the southern district of New York.

Endorsed on cover: File No. 19,408. S. New York C. C. U. S. Term No. 308. John A. Benson, appellant, *vs.* William Henkel, United States marshal for the southern district of New York. Filed July 1st, 1904. File No. 19,408.



Affidavit in Opposition to Motion to Advance.

Supreme Court of the United States.

JOHN A. BENSON,
Appellant,

against

WILLIAM HENKEL, United States Marshal,
Appellee.

STATE OF NEW YORK,
Southern District of New York, } ss

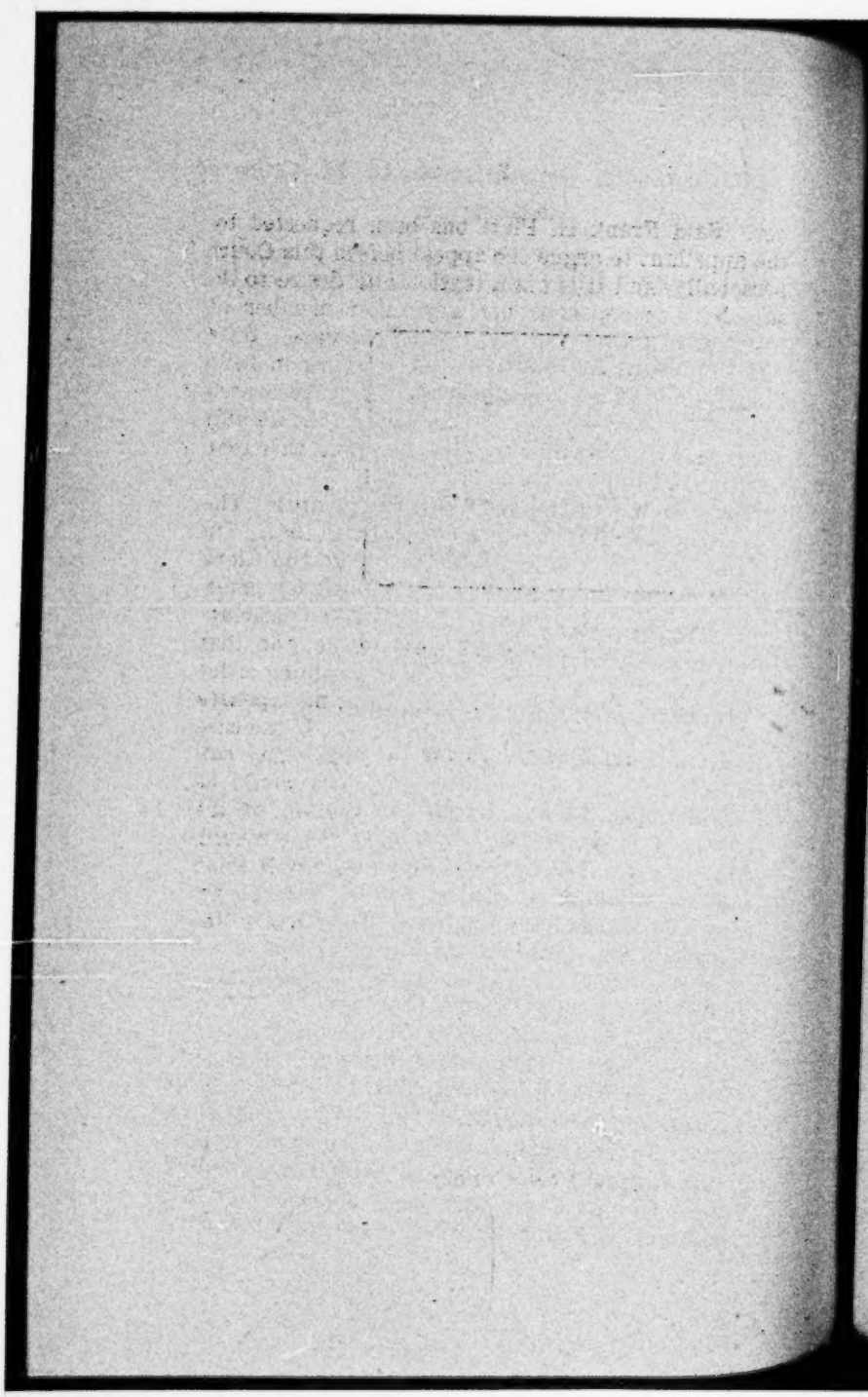
JAMES RUSSELL SOLEY, being duly sworn, says:

I am counsel of record for the appellant in this case.

The appellant was arrested in the City of New York on December 30, 1903, upon an indictment found in the District of Columbia, and after examination before the United States Commissioner, was held to await the warrant of the United States District Judge for his removal to the District of Columbia for trial. This is an appeal from an order of the United States Circuit Court in and for the Southern District of New York, dismissing a writ of *habeas corpus* obtained by the appellant.

The appellant was admitted to bail pending this appeal, and furnished cash bail to the amount required by the Court, namely, ten thousand dollars.

The argument in this case before the United States Circuit Court was made on behalf of this appellant by Frank H. Platt, deponent's law part-



ner. Said Frank H. Platt has been requested by the appellant to argue the appeal before this Court personally, and it is his intention and desire to do so. Neither deponent nor any other member of his firm has any familiarity with the case. Said Frank H. Platt contracted a serious illness in June last, from which he has not sufficiently recovered to resume his practice. It is believed that he will not have sufficiently recovered to argue this case earlier than March, 1905.

The record in the case is not yet printed. The case was docketed on or about July 1, 1904. On October 11, 1904, deponent's firm wrote the Clerk of this Court, offering to remit a deposit for printing expenses. The Clerk replied that no estimate of the printing expenses had been made, and that the case had not been reached in the regular order for printing. No estimate of such printing expenses has since been received from the Clerk. If the case should be advanced for argument to any day calendar earlier than March, 1905, counsel would be seriously embarrassed in the preparation of the brief by the delay in obtaining copies of the record.

No papers in connection with this application have been served upon the attorneys for the appellant which state the reasons upon which the application is or will be made.

JAMES RUSSELL SOLEY.

Sworn to before me this 8th day of December, 1904.

HENRY W. CLARK,
Notary Public,
New York County.

Brief for Appellant in Opposition to Motion to Advance.

Supreme Court of the United States.

JOHN A. BENSON,
Appellant,

against

WILLIAM HENKEL, United States Marshal,
Appellee.

On December 30, 1903, the above named appellant was arrested in the City of New York upon a complaint, consisting of a certified copy of an indictment found by the Grand Jury in the District of Columbia. From the time of the arrest until May 4, 1904, an examination proceeded before a United States Commissioner in the Southern District of New York. At the conclusion of the examination, on May 4, 1904, the defendant was committed by the United States Commissioner to await the action of the United States District Judge upon an application to be made by the United States Attorney for a warrant of removal under Section 1014, U. S. R. S., to the District of Columbia for trial. On the same day writs of *habeas corpus* and *certiorari* were granted by the United States Circuit Court for the Southern District of New York upon the application of this appellant. After argument, said writs were dismissed and the prisoner remanded to custody, and from the order entered on

the 31st day of May, 1904, dismissing the writs, this appeal is prosecuted. The Solicitor General, on behalf of the United States, now moves to advance the case on the docket of this Court for an early hearing.

I.

No facts are shown or exist requiring that the case be advanced.

The indictment purports to charge the appellant with the crime of bribery under Section 5451 of the United States Revised Statutes. This statute declares criminal the payment of money to any officer of the United States with the intent to induce him to do or omit to do any act in violation of his lawful duty. The indictment charges that on various dates in the year 1903 this appellant paid specified sums of money to two different employes of the Department of the Interior, in the General Land Office, for the purpose of inducing them to reveal to the appellant, when the same should come into their hands and knowledge, the contents of the report of certain special agents of the Department of the Interior who were engaged in an investigation of the appellant's transactions with the Government in relation to public lands.

It is contended by the appellant that the indictment charges no crime or offense against the United States. That the facts stated in the indictment and appearing in evidence do not disclose that any violation of duty on the part of the employes of the Department was involved; that, on the contrary, it clearly appears from the entire case that the alleged facts did not and could not involve any violation of their lawful duty, within the meaning of Section 5451, and that the appellant is detained

in custody and held for removal without due process of law. Several other contentions are made in behalf of the appellant involving the application of the Federal Constitution and the construction of Federal statutes.

This application is apparently made under Rule 26, Subdivision 3, providing that criminal cases may be advanced by leave of the Court on motion of either party. It was held shortly after the promulgation of this rule that motions to advance cases under the rule must state facts showing that the operations of the Government will be embarrassed by delay in the decision of the question involved.

In *United States v. Norton*, 91 U. S., 558, the Court said, by Mr. Chief Justice WAITE:

> "This is a criminal case. The motion to advance is made on behalf of the United States upon the representation of the Postmaster General, in substance, that the questions in dispute will embarrass the operations of the Government while they remain unsettled. As our rule has but recently gone into operation, we will in this case accept this statement as sufficient and grant the motion. Hereafter, motions to advance upon this ground must state facts in such a manner that we may judge whether the Government will be embarrassed in the administration of its affairs by delay."

In *Ward v. State of Maryland*, 12 Wall., 163, a motion to advance made by the plaintiff in error was denied, the Court saying:

> "Under that rule, the motion is addressed to the discretion of the Court, and inasmuch as it appears that the defendant is not in jail, the Court fails to see any reason for granting the motion."

The notice of motion served upon the attorneys

for the appellant did not disclose or purport to state the reasons upon which this application will be made, and we are entirely ignorant of the theory upon which the Government will make the request.

As a matter of fact, no reason exists for advancing the case out of its regular order on the docket. The acts alleged to have been committed by the appellant do not concern the present administration of any department or bureau of the Government. The date of the last act alleged is more than a year ago. The charge is that an investigation by special agents of the Department of the Interior was pending at some time in the past, and that the appellant paid money to certain employes of the Department for the purpose of securing early knowledge of the contents of this report. It is impossible to conceive that the administration of the business of the General Land Office or of the Department of the Interior can be embarrassed or in any respect affected by a delay of a few months in the decision of the case.

II.

The advancing of the case to an early date would seriously embarrass and prejudice the appellant.

While the appellant and his counsel have no disposition unreasonably to delay the argument of this appeal, they feel compelled to oppose this motion because the interests of the appellant would be greatly prejudiced if an early day should be fixed for the argument.

As appears by the affidavit of appellant's counsel of record submitted in opposition to this application, the record has not been printed. It is

practically impossible to begin the preparation of a brief until printed copies of the transcript of record are furnished by the Clerk. The case involves several questions of law, and the preparation for argument will necessarily require a considerable period of time.

In addition, it appears by the affidavit of appellant's counsel of record that the case was conducted and argued below by Mr. Frank H. Platt, and that Mr. Platt expects to argue this appeal, but will not have sufficiently recovered from a recent serious illness to participate in the argument before March, 1905. It appears that neither the counsel of record nor any other member of his firm is familiar with the questions involved.

It is therefore respectfully requested either that the application be denied absolutely or that, if it be granted, the case be advanced to a day calendar not earlier than some day during the month of March, 1905.

Respectfully submitted,

JAMES RUSSELL SOLEY,
Counsel for Appellant.

Supreme Court of the United States,

OCTOBER TERM, 1904.

No. 308.

JOHN A. BENSON,
Appellant,

vs.

WILLIAM HENKEL, United States Marshal for the Southern District of New York,
Appellee.

BRIEF FOR APPELLANT.

Statement of the Case.

This is an appeal from an order of the United States Circuit Court in and for the Southern District of New York, entered May 31, 1904, dismissing a writ of habeas corpus obtained by this appellant, and remanding appellant to the custody of the United States Marshal in said District to await the action of the United States District

Judge, in a proceeding to remove the appellant from the Southern District of New York to the District of Columbia.

On December 31, 1903, an indictment, found by the grand jury of the District of Columbia, charging appellant with violations of Section 5451 R. S., was filed with the Supreme Court of the District of Columbia (Rec., pp. 12-30). On December 31, 1903, appellant was arrested in the Southern District of New York upon a warrant issued by United States Commissioner Shields (Rec., p. 31). This warrant was issued upon complaint of William J. Burns, a Special Agent of the Interior Department (Rec., pp. 7-11). This complaint is on information and belief, and consists entirely of a repetition of the first count of the indictment. The basis of complainant's belief is stated to be a copy of the indictment, said copy being annexed to the complaint (Rec., p. 11). Appellant, upon being brought before the Commissioner, demanded an examination (Rec., p. 32). Hearings before the Commissioner continued on several days thereafter, until May 4. 1904, in the course of which witnesses were produced and examined by the Government and a certified copy of the indictment was admitted in evidence (Rec., pp. 34-204). No testimony was introduced by this appellant. At the close of the hearings the Commissioner made an order (p. 33) reciting that he found from the testimony probable cause to believe the accused guilty of the charge and committing him to the custody of the Marshal until a warrant for his removal to the District of Columbia for trial should be issued by the District Judge. Application was never made to the District Judge for a removal warrant. Immediately after his commitment by the Commissioner, appellant applied to the Circuit Court for the Southern District of New York for a writ of habeas corpus, and a writ of certiorari in aid thereof. The writs were granted by Judge Lacombe sitting in court. In obedience to the writ of certiorari the record of the proceedings, including

the testimony, before the Commissioner was returned. After hearing upon the returns to the writs, the Circuit Court dismissed the writ of habeas corpus and remanded the appellant (Rec., p. 207). The opinion of Judge Lacombe is in the record (p. 204). (*In re* Benson, 130 Fed. Rep., 486.)

The Indictment.

The indictment consists of eight counts.

Count First (Rec., p. 12), by way of inducement, alleges that, from January 1, 1901, to April 1, 1903, appellant was engaged with Frederick A. Hyde at San Francisco in the business of unlawfully obtaining from the United States public lands outside the forest reservations, in exchange for school lands within the forest reservations in California and Oregon, obtained from those States in a manner alleged to be contrary to the laws of said states and by alleged false and fraudulent practices. The details of the alleged fraudulent practices are set forth at considerable length and in substantially the same manner as in a subsequent indictment for conspiracy against this appellant, which was held to charge no crime against the United States, but to show at most frauds upon the States of California and Oregon. (*In re* Benson, 131 Fed. Rep., 968.) After this extended inducement, it is alleged in the first count that, on January 9, 1903, an investigation of these alleged unlawful appropriations of public lands was ordered by the Secretary of the Interior, with a view to a cancellation of the selections and patents of public lands made and obtained by Hyde and Benson, and of punishing the persons alleged to have been guilty of violations of the criminal laws of the United States in connection therewith; that such investigation was immediately begun by Special Agents Pugh and Steece, "under instructions from the said

"Secretary of the Interior that a report of their doings "and of all the facts ascertained by them in the premises "be transmitted to the said Secretary of the Interior, which "report, when so transmitted, would be for the exclusive "consideration and use of the proper officers of the said "Department of the Interior, and of the said General Land "Office, including the said Secretary of the Interior, the "Commissioner of the said General Land Office and the "Chief of the Special Service Division in the said General "Land Office hereinafter mentioned, and would be the "official and secret report of the said Special Agents, the "contents whereof should not be revealed by such Special "Agents or either of them to any unofficial person, before "or after its being transmitted to the said Secretary of the "Interior as aforesaid, and would not be intended for the "consideration or use of any person not a proper officer "of the said Department of the Interior or of the said "General Land Office as aforesaid, and particularly would "not be intended for the inspection or use of the said John "A. Benson or Frederick A. Hyde * * * , it being "true * * * that such report would be (as when "thereafter made and transmitted to the said Secretary of "the Interior it was) of such a character * * * that if "the contents of the same were revealed to the said John "A. Benson or the said Frederick A. Hyde, either directly "or indirectly, the securing of evidence to support the said "charge and to establish the facts pertaining to such un- "lawful appropriation of the said public lands by the said "John A. Benson and Frederick A. Hyde would be rend- "ered more difficult and expensive for and to the said "United States, if not impossible, and the objects of the "said investigation defeated." It is then alleged that, during the period aforesaid, Woodford D. Harlan was an officer of the United States acting in an official function under and by authority of the Department of the Interior, being Chief of the Special Service Division in the General

Land Office at Washington. Harlan's duties are then set forth as follows: "That the said Woodford D. Harlan dur-"ing the said period, by reason of his being such officer and "person acting for and on behalf of the said United States "in an official function under and by the authority of the "said Department, under the laws and the regulations "theretofore and then pursuant to law prescribed and pro-"mulgated by the Secretary of the Interior of the said "United States for the government of the said Depart-"ment and the conduct of its officers and clerks, and then "in force, was charged with certain duties, amongst others "with the duty of protecting the public lands of the said "United States from unlawful entry and appropriation, "and supervising the work of special agents employed for "such purpose, and preparing instructions to such special "agents relating to their various duties, with considering, "when received, the reports of such special agents pertain-"ing to such cases of alleged violation of the laws of the "said United States relating to the public lands as should "be referred to them for investigation, with initiating and "taking charge of proceedings looking to the cancellation of "such entries and selections of the said public lands as "should appear to be unlawful and fraudulent, and with "preparing cases for reference to the Department of "Justice; * * * and by reason of his being and acting "as such officer and person, it became and was the duty of "the said Woodford D. Harlan when discharging the duties "with which he was so charged as aforesaid * * * to "preserve and keep for the exclusive consideration and "use of the said proper officers of the said Department of "the Interior and of the said General Land Office all in-"formation and official reports coming to him the said "Woodford D. Harlan by virtue of his said office and in "his said place of trust, concerning such unlawful entries "and appropriations and concerning all violations of the "said laws and investigations thereof, and to not allow any

"such information or reports, or the contents of such re-"ports, to be in any manner given or revealed to or obtained "by any persons charged with such violations or the making "of such fraudulent entries or appropriations of such pub-"lic lands." It is then alleged that appellant, on March 15, 1903, at Washington, well knowing the premises, gave $200 to said Harlan "with intent then and there on the "part of him the said John A. Benson to induce the said "Woodford D. Harlan to do an act in violation of his law-"ful duty, that is to say, to reveal to him, the said John "A. Benson, when the same should come to his hands and "knowledge in his official capacity, the contents of the re-"port of the said special agents pertaining to the investi-"gation aforesaid." The foregoing are all the material allegations of the first count of the indictment.

Count Second (Rec., p. 16) alleges that appellant on March 20, 1903, at Washington, under the same circumstances and conditions set forth in the first count, gave said Harlan $200 "with intent then and there on the part "of him the said John A. Benson to induce the said Wood-"ford D. Harlan to do an act in violation of his lawful "duty, that is to say, to reveal to him the said John A. "Benson, when the same should come to the hands and "knowledge of him the said Woodford D. Harlan in his "official capacity, the contents of the report mentioned in "the said first count of the said Arthur B. Pugh and Harry "E. Steece, Special Agents as in the said first count afore-"said."

Count Third (Rec., p. 17) is identical with count second, except that it charges a payment on March 25, 1903, of the sum of $100.

Count Fourth (Rec., p. 17), by way of inducement repeats the description of the alleged business and practices in language identical with that of count first, except that Benson and Hyde are alleged to have been engaged in said

business on January 1, 1901, "and from thence hitherto," instead of limiting the period to April 1, 1903, as in the first count. This count also contains the same allegations concerning an investigation by the Secretary of the Interior, in language identical with that of count first, except that this count repeats merely the general allegation of the first count that the report "would be for the exclusive "consideration and use of the proper officers of the said "Department of the Interior and of the said General Land "Office," and omits the more specific additional allegation contained in count first, "including the said Secretary of "the Interior, the Commissioner of the said General Land "Office and the Chief of the Special Service Division in the "said General Land Office hereinafter mentioned." This count further differs from count first in that it omits the allegations that Harlan was Chief of the Special Service Division in the General Land Office and the allegations as to his duties as such officer, and instead alleges that Harlan was "a clerk regularly employed in the said General "Land Office," and that "by reason of his being such officer "and person acting as last aforesaid, and of his being "regularly employed in the said General Land Office, and "so having access to the records of the said Special Service "Division of the said General Land Office, was in a posi-"tion to ascertain and know the contents of any report "which should be transmitted by the said Special Agents "or either of them to, and intended for the exclusive use "of, said officers of the said Department of the Interior "and of the said General Land Office, as in this count set "forth, concerning the investigation in this count men-"tioned of the said charge against the said John A. Benson "and Frederick A. Hyde and pertaining to the said un-"lawful appropriation of the said public lands * * * "and by reason of his being such officer and person acting "for and on behalf of the said United States as in this "count aforesaid, it became and was the duty of the said

"Woodford D. Harlan to preserve and keep for the ex-"clusive consideration and use of the said proper officers "of the said Department of the Interior and of the said "General Land Office all information which might come to "his knowledge, or be ascertainable by him, by reason of his "said office and employment, pertaining to such reports as "might be so transmitted to the said proper officers by the "said Special Agents or any of them in regard to the said "investigation, without revealing the contents thereof or "any portion of the same to any unofficial person, much "less to the said John A. Benson and Frederick A. Hyde." This count then alleges a payment by appellant to Harlan on March 15, 1903, at Washington, of $200, with allegations of intent identical with those in count first.

Count Fifth (Rec., p. 21) alleges a payment by appellant to Harlan at Washington, under the circumstances and conditions set forth in the fourth count, of $200, with the same allegations of intent.

Count Sixth (Rec., p. 22) is identical with count fifth, except that it alleges a payment to Harlan on March 25, 1903, of $100.

Count Seventh (Rec., p. 22) is identical with count fourth, except that it includes the name of William J. Burns as a third special agent by whom the investigation was begun under the orders of the Secretary, and alleges a payment to Harlan on December 18, 1903, of $200.

Count Eighth (Rec., p. 26) is identical with count seventh, except that it alleges parenthetically that the report of the special agents was made and transmitted to the Secretary of the Interior on November 17, 1903, and except that this count concerns an alleged bribery of William E. Valk, who is alleged to have been a clerk in the General Land Office, the allegations concerning his employment and duties being identical with the allega-

tions concerning Harlan in counts fourth and seventh. This count alleges a payment of $100 by appellant to Valk on December 16, 1903.

Specifications of Errors.

Appellant will rely upon the following errors in the order of the court below:

1. The Court erred in dismissing the writ of habeas corpus granted herein on the 4th day of May, 1904.

2. The Court erred in remanding the petitioner (appellant), John A. Benson, to the custody of the marshal to await the action of the United States District Judge.

3. The Court erred in not discharging the petitioner (appellant) from custody.

4. The Court erred in holding that the sufficiency of the indictment is to be determined by the court in which it was found, to wit: the Supreme Court of the District of Columbia, and is not a matter of inquiry in removal proceedings.

5. The Court erred in not holding the indictment insufficient.

6. The Court erred in not holding and deciding that the indictment charges no crime or offense against the United States.

7. The Court erred in not holding and deciding that the indictment is insufficient in that it fails to set forth facts showing that any violation of a lawful duty upon the part of Harlan and Valk therein named was involved.

8. The Court erred in not holding and deciding that the indictment is insufficient in that it shows at most an inducement offered to Harlan and Valk, above named, to

do an act which could be done by them only upon the happening of a condition or contingency which might never be fulfilled and which act, in any event, constituted an offense only upon the happening of a condition or contingency which might never exist or occur.

9. The Court erred in not holding and deciding that there is no evidence of probable cause warranting the commitment of the petitioner (appellant).

10. The Court erred in not holding and deciding that the evidence introduced before the Commissioner in behalf of the prosecution contradicted the indictment and destroyed the *prima facie* case of probable cause made by the indictment.

11. The Court erred in not holding and deciding that the evidence introduced in behalf of the prosecution affirmatively shows that no offense against the United States was committed by the petitioner (appellant).

12. The Court erred in holding and deciding that it was unnecessary for the Court to make any analysis of the evidence.

13. The Court erred in not holding and deciding that the offenses alleged in the indictment, if any, are shown by the evidence to have been committed in California.

14. The Court erred in not holding and deciding that as to the offenses alleged in the first six counts of the indictment, petitioner (appellant) is entitled, under the United States Constitution, Article III., Section 2, and under the sixth amendment to the Constitution to a trial in the State of California.

15. The Court erred in not holding and deciding that the petitioner (appellant) is, in any event, entitled to a trial in the State of California upon all the offenses alleged in the indictment.

16. The Court erred in holding and deciding that Section 1014 U. S. R. S. authorizes the removal of the petitioner (appellant) from the Southern District of New York to the District of Columbia.

17. The Court erred in not holding and deciding that the District of Columbia is not such a District as is within the meaning of Section 1014 U. S. R. S.

18. The Court erred in not holding and deciding that Section 1014 U. S. R. S. authorizes removal from one judicial district of the United States to another judicial district of the United States, and that the District of Columbia is not a judicial district of the United States.

19. The Court erred in holding and deciding that the act of February 21st, 1871 (16 Statutes at Large, 426; Section 93, Revised Statutes, District of Columbia) extends the application of Section 1014 U. S. R. S. to the District of Columbia to the extent of authorizing the removal of prisoners from a judicial district of the United States to said District of Columbia.

20. The Court erred in not holding and deciding that the petitioner (appellant) is unlawfully restrained of his liberty.

21. The Court erred in not holding and deciding that the petitioner (appellant) is deprived of his liberty without due process of law within the meaning of the fifth amendment to the United States Constitution.

ARGUMENT.

POINT FIRST.

This Court has jurisdiction.

Section 5 of the Judiciary Act (Act of March 3, 1891, Chapter 517) provides that an appeal may be taken from a Circuit Court direct to this Court "in any case that involves the construction or application of the constitution of the United States."

This proceeding is based upon the allegation that the appellant's detention is without due process of law and, therefore, in violation of the Fifth Amendment to the Constitution. The petition alleges (Rec., p. 2, Par. 6) "that the aforesaid arrest, commitment, detention, re-"straint and imprisonment of your petitioner are illegal, "without due process of law and contrary to and in vio-"lation of the provisions of the Constitution and Laws of "the United States."

The 21st assignment of error (Rec., p. 213) is that "The court erred in not holding and deciding that the "petitioner is deprived of his liberty without due process "of law within the meaning of the fifth amendment to the "United States Constitution."

The appellant has contended throughout this proceeding that the indictment charges no crime under the laws of the United States, and that the evidence does not disclose or tend to disclose probable cause to believe that he committed any crime; that no crime is disclosed by the record which is triable by the Supreme Court of the District of Columbia; that the Commissioner was absolutely without jurisdiction or authority to order the arrest or commitment of appellant for removal to a distant tri-

bunal for trial, and that the process under color of which he is restrained of his liberty is illegal and void. These contentions are specified in detail in the petition (Rec., p. 2, par. 6). The arrest and detention for purposes of removal under such circumstances manifestly constitute a deprivation of liberty without due process of law.

The appellant also contended below that Section 1014, R. S., upon which this entire proceeding is founded, does not authorize a removal from a federal judicial district to the District of Columbia. This was not stated in the petition, but was argued before the Court below, as the opinion shows (Rec., p. 205). If this contention is well founded, then commitment for removal to the District of Columbia is a detention without due process of law. The court's failure to sustain this contention is assigned as error (Rec., p. 212, Assignments 16 to 19).

The appellant further contended that he is entitled under the Constitution, Art. III, Sec. 2, and under the Sixth Amendment to a trial in the State of California. This is shown by the opinion of the court below (Rec., p. 205). The court's failure to sustain this contention is assigned as error (Rec., p. 212, Assignments 13 to 15).

The record, therefore, discloses that the case involves questions of the construction and application of the constitution and that those questions were presented by appellant in the court below. This court accordingly has jurisdiction of this appeal.

Beavers v. Henkel, 194 U. S., 73.
Greene v. Henkel, 183 U. S., 249.
Wright v. Henkel, 190 U. S., 40.
Carter v. McClaughry, 183 U. S., 365, 381.
Burton v. United States, 196 U. S.
Horner v. United States, No. 2, 143 U. S., 570.

POINT SECOND.

The appellant is deprived of his liberty without due process of law. The Commissioner was without jurisdiction to order his arrest or committment. The process under color of which appellant is restrained of his liberty is illegal, unauthorized and void.

The proceedings before the commissioner were based upon the sworn complaint of Special Agent Burns. The complaint is merely a repetition of the first count of the indictment, the indictment being made a part of the complaint. Therefore, it is unnecessary to consider the complaint separately. Any analysis or criticism of the first count of the indictment will include the complaint.

The only authority claimed by the Government for this proceeding, the only basis of the commissioner's jurisdiction, is Section 1014 R. S., providing that "for any "crime or offence against the United States the offender "may * * * by any commissioner of a Circuit Court "* * * be arrested and imprisoned or bailed, as the "case may be, for trial before such court of the United "States as by law has cognizance of the offence."

The only attempted charge of a crime or offence presented to the commissioner was that contained in the certified copy of the indictment. This indictment charges no crime or offence against the United States. The evidence produced before the Commissioner in behalf of the Government cured no defects in the indictment, but on the contrary contradicted the allegations of the indictment in important particulars, as will be hereafter shown.

Consequently, the Commissioner was without jurisdiction to arrest or commit the appellant, and the district judge would have been without jurisdiction to order his removal. The process of the Commissioner under color of which appellant is detained having been issued without jurisdiction, is void, and appellant is deprived of his liberty without due process of law.

In *Greene v. Henkel,* 183 U. S., at page 261, this Court said: "We do not, however, hold that when an indictment "charges no offence against the laws of the United States, "and the evidence given fails to show any, or if it appear "that the offence charged was not committed or triable in "the district to which the removal is sought, that the court "would be justified in ordering the removal, and thus sub-"jecting the defendant to the necessity of making such a "defence in the court where the indictment was found. "In that case there would be no jurisdiction to commit "nor any to order the removal of the prisoner."

Judge Lacombe, in this case below, declined to give due consideration to appellant's contentions that the indictment charged no crime. He said in his opinion: "It is now well settled that the sufficiency of the indict-"ment is to be determined by the court in which it was "found and is not matter of inquiry in removal proceed-"ings (*Greene v. Henkel,* 183 U. S., 249; Beavers v. Henkel, "194 U. S., 73)."

Judge Lacombe evidently overlooked the language of this Court in the *Greene* case above quoted, and perhaps may have misunderstood certain language of Mr. Justice Peckham in the *Greene* case, at page 262, used in reference to the contention there made that the grand jury which found the indictment was not legally empanelled, and also by certain language in the *Beavers* case, at page 87, used by Mr. Justice Brewer in reference to the contention there made that the prisoner should have been allowed to show that the grand jury had not sufficient evi-

dence before it to justify the indictment. No question of the sufficiency of the indictment as charging a crime was before this Court in either the *Greene* or the *Beavers* case. Through this error of the court below appellant's writ of habeas corpus was dismissed without due consideration of his contentions that the indictment is vitally and fatally defective.

That Judge Lacombe erred in holding that he could not pass upon the sufficiency of the indictment, and decide whether it charges a crime against the laws of the United States, seems to have been very soon conceded by himself (*In re Benson*, 131 Fed. Rep., 968). In that case the same defendant was held by the Commissioner in New York for removal to Washington upon a different indictment. A habeas corpus writ was issued by the Circuit Court. Judge Lacombe examined the sufficiency of that indictment, and two months after the decision in this case, held that indictment insufficient because it failed to state a crime, and discharged the prisoner. Judge Lacombe, therefore, seems to have overruled the fundamental point of his decision in this case, almost immediately after it was made.

The sufficiency of the charge of a crime is jurisdictional. It has always been held that the writ of habeas corpus is a proper instrument to secure the release of a prisoner held under order or sentence of a tribunal which acted without jurisdiction, and whose process was consequently void.

In re Nielson 131 U. S., 176
In re Coy, 127 U. S., 731.
In re Snow, 120 U. S., 274.
In re Sawyer, 124 U. S., 200.
Ex parte Bain, 121 U. S., 1.
In re Ayers, 123 U. S., 443.
Ex parte Siebold, 100 U. S., 371.
Ohio v. Thomas, 173 U. S., 276.

It has been the practice in all Federal jurisdictions, in removal proceedings, to determine whether the indictment sufficiently charges a crime and to discharge the prisoner if it does not.

Stewart v. U. S., 119 Fed., 89.
In re Buell, 3 Dillon, 116.
In re Terrell, 51 Fed., 213.
In re Corning, 51 Fed., 205.
In re Dana, 68 Fed., 886.
United States v. Lee, 84 Fed., 626.
In re Greene, 52 Fed., 104.
In re Belknap, 96 Fed., 614.
In re Huntington, 68 Fed., 881.
In re Conners, 111 Fed., 734.
In re Doig, 4 Fed., 193.

In *In re Palliser*, 136 U. S., 257, this Court, in a removal proceeding similar to that at bar, examined the indictment to ascertain whether it charged a crime.

POINT THIRD.

It appears affirmatively, both in the indictment and in the testimony of the Government's witnesses, that at the time of the payments to Harlan and Valk, the special agents' report had not come within the possession, knowledge or reach of either of them, and there is no allegation or proof that it ever would. They had no duty concerning it, and it was not shown that they ever would have any such duty. The crime of bribery cannot be predicated upon a payment to an officer to induce him to perform an act, as to which he has no duty, and may never have any duty.

The argument under this heading assumes that there was a duty imposed upon Harlan and Valk to preserve the secrecy of documents of the kind described. It is not intended to concede that there was any such duty, except for the point now under argument. It appears later herein that there was no such duty.

The indictment purports to charge defendant with the crime of bribery under Section 5451, R. S. This Section reads as follows:

"5451. Every person who promises, offers, or gives "or causes or procures to be promised, offered or given, "any money or other thing of value, or makes or tenders "any contract, undertaking, obligation, gratuity or se- "curity for the payment of money, or for the delivery or "conveyance of anything of value, to any officer of the "United States, or to any person acting for or on behalf

"of the United States in any official function, under or by "authority of any department or office of the Govern- "ment thereof, or to any officer or person acting for or on "behalf of either House of Congress, or of any committee "of either House, or both Houses thereof, with intent to "influence his decision or action on any question, matter, "cause or proceedings which may at any time be pending, "or which may by law be brought before him in his official "capacity, or in his place of trust or profit, or with intent "to influence him to commit or aid in committing, or to "collude in, or allow, any fraud, or make opportunity for "the commission of any fraud on the United States, or "to induce him to do or omit to do any act in violation of "his lawful duty, shall be punished as prescribed in the "preceding section."

The indictment is framed under the final clause of this section, declaring it a crime to give anything of value to any person acting for the United States in any official function, with intent to induce him to do or omit to do any act, in violation of his lawful duty. Every count expressly alleges the payment to have been made "with intent * * * to induce the said Woodford D. Harlan (or William E. Valk) to do an act in violation of his lawful duty, that is to say, to reveal to him, the said John A. Benson, *when the same should come to his hands and knowledge in his official capacity*, the contents of the report of the said special agents."

The report is not alleged to have been within the jurisdiction of either Harlan or Valk, or in their possession or accessible to them at the time of the alleged payments to them by the appellant. There is no allegation in the indictment that the report ever came within the jurisdiction or scope of the official duties or knowledge of either of these employees of the Land Office. The allegation that such payments were made to induce each of them to reveal the contents of the expected report "when the same should come to his hands and knowledge in his official capacity," constitutes a declaration that at that time no such report had come to his hands or knowledge. If it had not

reached him, there can be no certainty that it ever would reach him. There is not an allegation that this report would ever come within the jurisdiction of these employees. There is the most studious and precise care on the part of the pleader to avoid such an allegation and to endeavor to supply the inability to make this essential and vital averment.

The first count (Rec., p. 15) alleges that Harlan was Chief of the Special Service Division of the General Land Office, that his duties were to protect the public lands from unlawful entry, to supervise the work of special agents employed for that purpose, to prepare instructions to such special agents and to consider their reports when received. The count then alleges that by reason of his being and acting as such officer, it became his duty (an allegation of a conclusion and not of a fact) to keep secret any information and official reports coming to him by virtue of his office. These statements contain no reference to this particular report. The general allegation that it was his duty to supervise special agents' work, give them instructions and consider their reports when received, has no tendency to show that this report would ever come to him, or be within his jurisdiction or within the scope of his duties. The contrary appears in the indictment itself. It is alleged (Rec., p. 14) that this investigation was ordered by the Secretary of the Interior; that the special agents were instructed by the Secretary to transmit their report to the Secretary. It is alleged that the report would be "(as when thereafter made and transmitted to the said Secretary of the Interior it was)" of such a character, etc. The investigation was not one in the routine of the Land Office, which Harlan might initiate and supervise and the report of which would be transmitted to him, but it was a special investigation under the personal direction of the Secretary. It was not to be reported to Harlan, but, as the indictment shows, to the Secretary.

The second and third counts refer generally to the first for their statements of facts, and so are subject to the same comments. The fourth count (Rec., p. 20) does not allege that Harlan was Chief of the Special Service Division, but alleges that he was a clerk in the Land Office. It is alleged that by reason of being so employed and so having access to the records of the said Special Service Division of the General Land Office, he was in a position to ascertain and know the contents of any report which should be transmitted by the special agents. This allegation amounts to nothing, except to state that if any report should ever be filed in the Special Service Division, Harlan was in a position to see it. There is no allegation that this report was or ever would be filed in the records of the Land Office.

Counts fifth, sixth and seventh are identical in this respect with count fourth, as are also the allegations of count eighth in reference to Valk.

So far as the first seven counts show, the report was not even in existence at the time of the alleged payments. Count eighth alleges parenthetically (Rec., p. 29) that the report was transmitted to the Secretary of the Interior on November 17, 1903. The payments to Harlan in the first seven counts are alleged as having been made respectively on March 15, 20, 25, 15, 20, 25, and December 18, 1903, and to Valk on December 16, 1903. Hence the indictment shows that at the time of the payments alleged in counts first to sixth, the report was not then in existence. At the times alleged in counts seventh and eighth it appears from the eighth count that it was in existence, in the possession of the Secretary, but it is not alleged to have been within the knowledge, possession or jurisdiction of these employees; and the seventh and eighth counts, it will be remembered, rest only upon the allegations that Harlan and Valk were clerks in the Land Office and had access to its records, but without any allegation that this

particular report was ever filed among such records or was ever destined for the archives of that office.

That our criticisms of the indictment are not technical, and that the omission of an allegation that this particular report ever came to the knowledge of the land office employees is not inadvertent but a substantial defect, is proved by the Government's own witnesses, and these are the same witnesses who testified before the Grand Jury, as appears by the names endorsed on the indictment (Rec., p. 30).

The instructions to Special Agent Pugh signed by the Secretary of the Interior in person were introduced in evidence (Rec., pp. 44, 45) showing that this investigation was not one in the regular routine of the Land Office such as those which Harlan initiated and supervised. Burns, one of the special agents engaged in this investigation, testified that he made verbal reports to the Secretary (Rec., p. 193); that he acted under appointment by the Secretary (Rec., p. 194); that he made a written report to the Secretary in November, 1903 (Rec., p. 195); and that his reports were to the Secretary and to nobody else (Rec., p. 195). Harlan testified that the investigation was in progress when he first learned of it, which shows that he did not initiate it (Rec., p. 97). Further it appears that he had no official relation to the investigation, as his offer to appellant was to try to get a copy of the report from Steece (Rec., pp. 84, 85). He testified that in March, 1903, he did not have the report; that he did not know whether he could ever get it; that he expected to get it from Steece through personal friendship (Rec., p. 139); that when he wrote appellant in March about the investigation the report had not been made (Rec., p. 140); that it had not been made at the time of his receipt of money from the appellant in March (Rec., p. 141). As to the December transaction, Harlan testified that he did not know in December as a matter of fact whether the report had ever been made (Rec., p. 141); that he offered to endeavor to obtain for

the appellant from the stenographer the notes of the investigation, not the report of the Special Agents from any file under his control or within his reach as an officer (Rec., pp. 102, 149); but that he did not have the stenographer's notes and could not get them unless he stole them, and was not in a position to get them at all in the usual course of his duty, and that in any event appellant said he did not want the stenographer's notes (Rec., p. 132); that the fictitious information he gave appellant in December as to the names of persons who had testified in the investigation, he did not obtain from any of the secret archives of the government (Rec., p. 136), but from Special Agent Burns, as a part of the plan to entrap appellant into paying money to him (Rec., p. 136); that in December, in the usual course of business, he had no access to any report made by any special agents, and that he did not then offer appellant any special agents' report (Rec., p. 137).

The testimony of Valk is absolutely devoid of the slightest reference to any special agents' report. It relates entirely to an arrangement said to have been made in 1897, under which Harlan and Valk helped to expedite Benson's cases, and which was dragged in to prejudice the appellant's case; this testimony was offered by the United States Attorney expressly and only for the purpose of showing antecedent relations between appellant and the witnesses.

This brief reference to the testimony of the Government's own witnesses proves conclusively that the indictment is fundamentally short of necessary averments, and that our criticism is not as to formalities or technicalities; that the omissions of essential facts to show that the report was within the jurisdiction, possession or knowledge of either Harlan or Valk cannot be cured.

Both the indictment itself and the Government's own evidence before the Commissioner show, therefore, that the report was not within the jurisdiction of either Har-

lan or Valk, and probably never would be; that it was not even within their knowledge or accessible to them, and might never be; that neither had any duty to exercise concerning it, and never would have. Bribery cannot be predicated upon a payment made to induce employees of the Land Office to reveal a report then not in existence and which was not within their official functions or their knowledge. Whether the report would ever come within Harlan's jurisdiction as Chief of the Special Service Division depended at the times of the payments, first, upon its being sometime made, and then upon the contingency or possibility of its being referred to his division by the Secretary of the Interior, a contingency the uncertainty of which is shown by the fact that the report was not even made until long after Harlan had ceased to be connected with the Special Agents' Division. Whether the report would ever be accessible to Harlan or Valk as clerks in the Land Office depended upon the contingency of its being filed with the records of that office. But bribery cannot be predicated upon the happening of a contingency.

Harlan and Valk could, of course, have no present duty with reference to a thing then non-existent; they could not be bribed to commit a violation of lawful duty in respect of a particular matter, when that particular matter did not and might never exist, and when they might never in any event have a duty to exercise respecting it. It is the essential element of the crime of bribery under consideration that the act which is to be committed or omitted must be a violation of the official's lawful duty. The criminal character of the transaction must be complete at the time of the offer or payment made to induce the official action. Money may be paid to an official to do something entirely outside of his official duties, and the transaction is innocent. The transaction originally innocent, cannot be made corrupt by the happening of

some contingency at a future time which brings the act to be done within the scope of the official's duties. This is equally true, even when the parties expected at the time of the offer that the contingency would happen, and that the act contemplated would be a violation of lawful duty. Otherwise, the crime would lack certainty and would depend not upon facts but upon contingencies and upon the intention and expectation of the parties; and a man might be held guilty of bribery for attempting to induce an act by an official which he believed to be a violation of the official's lawful duty, although the matter might never in fact come within the scope of the duty of such official. This would be to convict solely for harboring a guilty intention.

In *In re Yee Gee, 83 Fed., 145* (U. S. District Court, Northern District of Washington), the defendant was indicted under Section 5451 R. S., for bribery of an interpreter to render a favorable translation of certain Chinese documents intended to be offered in evidence before a United States Commissioner in a criminal charge then pending against the defendant. It was held that the indictment was insufficient because the interpreter held his position under an appointment by the Secretary of the Treasury, and because he had not at the time of the offer by the defendant been designated to serve as an interpreter before the United States Commissioner. Judge Hanford said: "He could not be accepted as an interpreter "at the hearing of Yee Gee's case without the approval and "authorization of the Commissioner presiding at the hear-"ing. Therefore, if, in acting as an interpreter at such "hearing, he may be regarded as performing in any sense "an official function, his official character would be derived "from his appointment or designation to act in that capa-"city by the commissioner, and not from his general ap-"pointment from the Secretary of the Treasury. It is my "opinion that the offer to bribe alleged to have been made

"by Yee Gee does not amount to a completed offence within "the provisions of Section 5451, for the reason that it was "not intended to influence Mr. Gardner in the manner of "performing his duty under his appointment from the "Secretary of the Treasury, and he had not at that time "been appointed or designated by the commissioner to "serve as an interpreter at the contemplated hearing, and "held no relation to the action by reason of any appoint-"ment to act as an interpreter in any judicial proceeding. *"An offer made to a person in contemplation of a mere "probability that he may be called to perform official func-"tions, and intended to influence his conduct in perform-"ance of such functions, if he shall be so called, does not "violate this statute."*

In the recent important case of *State v. Butler, 178 Mo., 272* (Supreme Court of Missouri), an officer of a company engaged in disposing of the garbage of St. Louis was indicted for attempted bribery of a member of the Board of Health, to procure the latter's vote for a renewal of a contract with the city enjoyed by the defendant's company. The statute under which the indictment was found defined bribery as an offer of money to an official to induce his vote on any question which might by law be brought before him in his official capacity. The Municipal Assembly had assumed by an ordinance to give the Board of Health power to let the contract in question. It was urged by the defendant that it did not appear that at the date of the alleged attempted bribery the ordinance had been approved and signed by the Mayor, and that for that reason there was no ordinance in existence at the time of the alleged offer conferring jurisdiction upon the Board of Health in the matter in question. Although the ordinance had been enacted by the Assembly and the criminal intent of the defendant was complete, this contention was sustained, the Court saying (p. 319): "The offence must be "complete at the time of the offer and cannot be made to

"depend upon the future action of the law makers, who "might possibly some time in the future enact a law which "would require the officer to act upon questions which may "come before him. This would make the offence depend "upon a condition or a contingency which might never "happen."

In *State v. Joaquin, 69 Me., 218,* the defendant had been indicted under a statute making it a crime to endeavor to incite another to commit perjury in a proceeding before any court created by law or in relation to which an oath is by law authorized. It appeared that the defendant had sought to induce another to commit perjury in a suit not then actually pending, but which was designed to be brought. The Court held that this did not involve a violation of the statute, saying: "The objection is that the "suit or proceeding was not pending. It might never be "commenced. Therefore, it was an instigation to commit "an offence upon a condition or contingency that might "never happen. This was rather an ideal than a real "offence, morally reprehensible, no doubt, but not such as "the law sees fit to notice."

In *State v. Howard, 137 Mo., 289,* the defendant was indicted under a law declaring it a crime to offer a valuable consideration to procure or intice another to commit perjury "in any cause, matter or proceeding in or concerning which such other person might by law be sworn." The defendant had offered an inducement to another to commit perjury in a prosecution of the defendant not then commenced, but for which he was under recognizance. It was held that this inducement constituted no violation of the statute.

In *Newman v. State, 97 Ga., 367,* the defendant was indicted for attempted bribery of the presiding justice of an appellate court, the bribe having been offered for the purpose of influencing his decision in a certain case. It

appeared that some of the steps necessary for an appeal to that court had been taken, but that the appeal had not been properly perfected. It was held that the charge of bribery could not be sustained since no case was lawfully pending in the Appellate Court with reference to which the offence of attempted bribery could be committed.

In *Moore v. State, 69 S. W. Repr., 521* (Texas Criminal Appeals), the appellant was indicted for bribery of a deputy sheriff to allow him to escape from custody. The statute made it criminal to bribe or offer to bribe any peace officer to permit any prisoner in his custody to escape, and the Penal Code defined a bribe as a gift or offer for the purpose of influencing an officer in the performance of any duty, public or official. It appeared at the trial that the deputy sheriff had taken appellant into custody on a criminal charge, but acted without a warrant, and that the arrest was illegal. It was held that the officer was not performing a legal duty, and that appellant, therefore, was not guilty of bribery.

See to the same effect *Ex parte Richards, 72 S. W. Repr., 838, 839* (Texas Criminal Appeals).

In *Messner v. State, 40 S. W. Repr., 438* (Texas Criminal Appeals), it was held not to constitute bribery to offer to a private citizen, to whom a sheriff had temporarily committed the custody of the prisoner, a reward for allowing an escape.

In *Barefield v. State, 14 Ala., 603,* it was held that a tender of a bribe to a justice of the peace corruptly to decide a cause not then pending, but afterwards to be instituted before him, was not within the statute against offering to an official any gratuity with the intent of influencing his act or decision on any matter which may be pending, or may by law come before him in his official capacity.

POINT FOURTH.

Neither Harlan nor Valk was forbidden by any lawful duty to reveal to Benson the contents of the report, even if they ever should come into a position to do so.

Each count of the indictment alleges that Benson paid money to Harlan or Valk to induce him to reveal to Benson the contents of the Special Agents' report, when it should come into his hands and knowledge in his official capacity, which act, it is alleged, would be a violation of his lawful duty. This is on its face not an allegation of fact, but a mere conclusion of the pleader. Nor is the pleader's inference supported by any other allegation of fact in the indictment, nor by any evidence taken before the Commissioner. On the contrary the evidence as to duty contradicts the pleading. No statute exists which made it unlawful for Harlan and Valk to reveal the contents of the report, and the bribery section of the Revised Statutes contemplates only violations of lawful duty, that is to say, duty imposed by law. But even if a broader construction must be given to the words "lawful duty," still it was not alleged in the indictment or otherwise shown that the duty of secrecy as to such reports was imposed by any department regulation, rule, order, or even by regular course of business. The contrary was proven by the Government's witnesses.

(a) *The indictment contains no allegation of fact showing that it would be a violation of duty for Harlan or Valk to reveal the contents of the report.*

In the *Beavers Case*, 194 U. S., 73, 85, this Court has held that an indictment found by a grand jury should be

accepted in any removal proceeding as at least *prima facie* evidence of probable cause. The Court has thus, in such proceedings, relaxed the common rule that evidence of facts must be direct, and holds that a magistrate may accept, as evidence of jurisdictional facts, the statements of fact contained in the indictment. But the Government in no such case is relieved of its obligation to prove facts by some kind of evidence, and the indictment cannot furnish evidence of any facts not stated in it. The sufficiency of the indictment as evidence must be limited to the facts which it states. A magistrate has no jurisdiction to hold a prisoner in a removal proceeding except upon facts presented showing probable cause to believe that the prisoner has committed the crime charged. The magistrate may accept statements of fact, whether presented by witnesses or in an indictment, but the conclusions of a witness furnish no evidence upon which a magistrate may act, and still less can the conclusions of a pleader, or of a grand jury, be legitimately used to supply a deficiency of proof of facts.

This indictment fails to state any facts showing that it would be a violation of duty for Harlan or Valk to reveal the contents of the report, if they ever came into position to reveal it. Every allegation on the subject of duty is a conclusion of the pleader.

The witnesses produced by the Government not only failed to supply the defect in the indictment as to proof of duty, but they affirmatively showed that no such duty as is claimed was imposed upon Harlan and Valk.

This point is substantial and not technical, for it could not be overlooked or amended by the trial court, as is shown herein, and is so controlling and final that it could be passed upon as well in the court of removal as in the court of trial. Assuming this, the prisoner ought not to be subjected to a removal merely that the trial court may hold that a crime is not charged, when such condition is apparent to the court of removal.

The statements in the indictment material to this point are: That an investigation was ordered by the Secretary to be made by Special Agents Pugh and Steece for the purpose of ascertaining the facts as to selections of land by Hyde and Benson, with a view to the rejection and cancellation of their selections, and to punishing any guilty persons; the special agents were instructed to make a report to the Secretary, "which report when so "transmitted would be for the exclusive consideration and "use" of the officers of the department, and "would be "the official and secret report, the contents whereof should "not be revealed by such special agents or either of them "to any unofficial person" and "would not be intended for "the consideration or use of any person not a proper officer "of the department" and "particularly would not be in-"tended for the inspection or use of" Benson, that such report would be, when made, by reason of its tending to show the guilt of Benson, such that, if the contents were revealed to Benson, the securing of evidence against him would be rendered more difficult or impossible, and the objects of the investigation defeated (Rec., p. 14). Each count alleges that on a specified date in 1903 the appellant gave money to Harlan or to Valk "with intent "* * * to induce the said Woodford D. Harlan (or William E. Valk) to do an act in violation of his law-"ful duty." In an attempt to show that the publication of the contents of the report would constitute a violation of lawful duty the following allegations were made: Count first (and count second and third by reference to count first) alleged that until April 1, 1903, Harlan was Chief of the Special Service Division in the General Land Office; that (Rec., p. 13) "by reason of his being such "officer and person" he was charged with the duties of protecting the public lands from unlawful entry, supervising the work of special agents employed for such purposes, preparing instructions to such special agents, with con-

sidering, when received, the reports of special agents, etc., and that "by reason of his being and acting as such officer "and person it became and was the duty of the said Wood- "ford D. Harlan when discharging the duties with which "he was so charged as aforesaid * * * to preserve "and keep for the exclusive consideration and use of the "said proper officers of the said Department of the In- "terior and of the said General Land Office all information "and official reports coming to him, the said Woodford D. "Harlan, by virtue of his said office and in his said place "of trust concerning such unlawful entries and appropria- "tions * * * and to not allow any such information "or reports or their contents to be in any manner given or "revealed to or obtained by any persons charged with "such violations." Counts fourth and seventh (and counts fifth and sixth by reference to count fourth) are not based upon Harlan's connection with the Land Office as Chief of the Special Service Division, but allege that Harlan was a clerk in the General Land Office; and that said Harlan (Rec., pp. 20 and 25) "by reason of his being "such officer and person acting as last aforesaid and of "his being regularly employed in the said General Land "Office and so having access to the records of the said "Special Service Division of the said General Land Office "was in a position to ascertain and know the contents of "any report which should be transmitted by said special "agents, or either of them to and intended for the exclus- "ive use of said officers of the said Department of the In- "terior and of the said General Land Office" and that "by "reason of his being such officer and person acting for and "on behalf of the said United States, as in this count "aforesaid, it became and was the duty of the said Wood- "ford D. Harlan to preserve and keep for the exclusive "consideration and use of the said proper officers of the "said Department of the Interior and of the said General "Land Office all information which might come to his "knowledge or be ascertainable by him by reason of his said

"office and employment pertaining to such reports as "might be so transmitted to the said proper officers by "the said special agents."

The allegations of the eighth count in reference to the employment of Valk as a clerk in the Land Office and his supposed duties are identical with the allegations of counts fourth and seventh in reference to Harlan.

These allegations as to the duty of secrecy on the part of Harlan and Valk are not allegations of fact, but are, on their face, mere statements of the pleader's conclusions. No facts are elsewhere alleged in the indictment from which it appears that these conclusions are correctly drawn. The first three counts allege Harlan's employment as Chief of the Special Service Division, and it is alleged that by reason of his being such an officer he was charged with the duty of initiating investigations by special agents and of considering their reports upon such investigations, when received. These allegations as to the duties with which he was charged are also stated as conclusions and not as matters of fact, but they would not in any event justify the conclusion that there was any duty of secrecy on his part with reference to this particular special agent's report of an investigation which he did not initiate. That it was his duty to initiate investigations and to consider reports thereon has no tendency to prove that it was his duty to keep the contents of such report secret. The counts, other than the first three counts, allege merely the employment of Harlan and Valk as clerks in the Land Office, and that by reason of said employment they had access to reports of special agents. These allegations certainly do not justify the conclusion that any duty of secrecy existed on their part, especially with reference to this particular special agent's report, which was not and which probably never would be on file in the Land Office. That their employment in the Land Office gave them access to the records of a particular Divi-

sion of the Land Office has no tendency to prove that it was their duty to keep the contents of such records secret.

The indictment contains, therefore, no statement of fact that a duty existed to keep the report secret. There is no statute imposing the duty. It was affirmatively shown by the chief clerk of the Land Office, and by other Government witnesses, that there was no regulation, and no rule or order purporting to impose the duty of secrecy. No fact whatever was proven, showing that any such duty of secrecy had even been established, or that the discretion of Harlan as to publication of reports had ever been curtailed.

Some claim was made that this report was in its essential nature secret and confidential. The allegations that such report "would be for the "exclusive use of" the officers of the department, etc., are perhaps intended to support this idea, but these allegations also are mere conclusions, and nothing was offered as facts to sustain them. It cannot be assumed that there would be anything in the report on Benson that would in its nature be secret. The report might exonorate him, in which case it ought to be made public. It might contain statements which should be furnished to him to answer. Special agent's reports, within common knowledge, are often given out publicly or to those interested in them. They are not read and filed merely, they are used, and use means communication of their contents to persons in and out of the department. The discretion of this use must vest in some officials, and if such discretion was not vested in Harlan, the Chief of the Special Agents Division, or if he was under duty to preserve the secrecy of the reports, then that ought to have been shown by some statute, regulation or order to that effect, or by some witnesses competent to show the fact; the failure to prove so important and vital a fact cannot be supplied by assumption that the report, when received by Harlan, if ever,

would be such a report that it would be his lawful duty to hide its contents from Benson.

An allegation that a duty exists or that a certain thing is a person's duty is a conclusion of law. It is for the court to determine upon a disclosure of the facts whether or not a duty exists.

Butler v. State, 17 Ind., 450.
Buffalo v. Holloway, 7 N. Y., 498.
Atwood v. Welton, 57 Conn., 515.
Cane v. Chapman, 5 Ad. & El., 647.
Bailey v. Bussing, 29 Conn., 1.
Nickerson v. Bridgeport Hydraulic Co., 46 Conn., 27.
Hayden v. Smithville Mfg. Co. 29 Conn., 548.
Hewison v. New Haven, 34 Conn., 138.
Ency. of Pleading & Practice, Vol. 12, p. 1040.

An allegation of a conclusion of law in an indictment, without a statement of the facts from which such conclusion may be drawn, is insufficient. In *United States v. Hess*, 124 U. S., 483, this Court said, at p. 487: "The "object of the indictment is * * * to inform the "court of the facts alleged, so that it may decide whether "they are sufficient in law to support a conviction if one "should be had. For this, facts are to be stated, not con- "clusions of law alone."

See also:

U. S. v. Kelsea, 42 Fed., 882, 889.
U. S. v. Kessel, 62 Fed., 59, 61.
U. S. v. Post, 113 Fed., 852, 854.
Rieger v. U. S., 107 Fed., 916, 934.
People v. Cooper, 3 N. Y. Crim. Reps., 117.
W. St. L. & P. R. R. Co. v. People, 12 Ill. Appeals, 448.
State v. Paul, 69 Me., 215.

That an indictment constructed only of conclusions is insufficient must be especially true where the indictment is employed outside the jurisdiction of the trial court as evidence merely. It would be unjust in the extreme to remove a defendant a long distance from his home for a trial, upon the evidence of an indictment stating only conclusions and setting forth no facts upon which to determine whether a crime has been committed. Stripped of its conclusions as to duty and secrecy, there remains nothing in this indictment upon which a charge of crime can be based. The only material facts alleged are that an investigation was ordered by the Secretary, that Harlan and Valk were employees of the Land Office, and that Benson gave them money to procure the contents of the report.

The Government may contend that the allegation in the last paragraph of each count in the language of the statute is sufficient. In *U. S. v. Carll*, 105 U. S., 611, this Court said, by Mr. Justice Gray: "In an indictment upon a statute, it is not "sufficient to set forth the offense in the words of the stat- "ute, unless those words of themselves fully, directly and "expressly, without any uncertainty or ambiguity, set "forth all the elements necessary to constitute the offense "intended to be punished; and the fact that the statute in "question, read in the light of the common law and of other "statutes on the like matter, enables the Court to infer the "intent of the legislature, does not dispense with the neces- "sity of alleging in the indictment all the facts necessary "to bring the case within that intent."

In *U. S. v. Britton*, *107 U. S., 655, 669*, this Court held that a charge of misapplication of the funds of a national banking association was not sufficiently alleged by following the words of the statute, but that averments must be made to show how the application was made and that it was unlawful.

In *Keck v. U. S., 172 U. S., 434, 437*, the indictment charged defendant with knowingly and wilfully importing

diamonds contrary to law and with intent to defraud the United States. The indictment followed the language of the statute. This Court held the indictment bad for want of any facts to show that the importation was contrary to law.

See also:

Batchelor v. U. S., 156 U. S., 426, 429.
U. S. v. Hess, 124 U. S., 483, 487.
Evans v. U. S., 153 U. S., 584, 587.
U. S. v. Melfi, 118 Fed., 899, 902.
U. S. v. Wardwell, 49 Fed., 914.

Section 5451, R. S., does not set forth the elements necessary to constitute the offense in every case, but merely describes the general nature of the offense prohibited. It makes it a criminal act to induce a violation of lawful duty, but it does not prescribe in what such lawful duty shall consist. It is consequently essential that an indictment under this statute should not simply follow the language of the statute, but should set forth the particular matters which are relied upon as constituting the lawful duty involved and its violation, in order that the Court may judge whether, in truth, a violation of lawful duty is involved. The indictment in this case supplements the charge made in the language of the statute by specifying the act which defendant is alleged to have induced the employes of the Government to commit; but it fails, as we have hereinbefore shown, to allege facts from which the Court may determine that this act constituted a violation of lawful duty.

The reasons and principles upon which an indictment charging the crime in the words of the statute is held insufficient apply with especial force where the indictment is introduced merely as evidence in a removal proceeding.

(b) Section 5451, R. S., contemplates only a payment to induce a violation of some duty prescribed by law.

Section 5451 provides as follows:

"Every person who promises, offers or gives * * * any money or other thing of value * * * to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any Department or office of the government thereof * * * to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed in the preceding section."

The phrase "lawful duty" is equivalent to the expressions "legal duty" or "duty prescribed by law." The section does not impose a punishment for a payment to induce any and every violation of duty. The prohibition is limited and restricted to those duties which are prescribed by law. Some force must be given to the word "lawful," and if it has any function it must be that of defining and limiting the meaning of the word "duty," to legal duty, as contradistinguished from matters of morals, routine, propriety or general office discipline. The words "legal" and "lawful" are synonyms (Standard Dictionary, Webster's Dictionary, Century Dictionary). A legal duty is defined to be that which the law requires to be done or forborne (Wharton on Negligence, Section 24). The law takes no cognizance of a breach of a duty except it be a legal one, one which the law imposes (*Pennsylvania Co. v. Frana*, 13 Ill. Appeals, 98).

Unless Section 5451 is construed as limited to violations of duty constituted by law it is broader in its scope than the crime of bribery, as that crime is universally known and established. Bribery is defined by the Am. & Eng. Ency. of Law, 2d Ed., as follows: "Bribery is the giving, offering "or receiving of anything of value or any valuable service "intended to influence one in the discharge of a legal duty. "It does not apply to a mere moral duty."

Upon any other construction the statute could be reduced to an absurdity. According to the theory of the prosecution any matter of discipline, etiquette or routine of the Land Office, however trivial, whether established by verbal order, or written rule, or custom, would constitute lawful duty to induce a violation of which would be bribery, although the violation involve on the part of the clerk no official corruption whatever. Such a construction would be contrary to any reasonable application of the principle of strict construction of penal laws. The crime of bribery is an infamous crime, and the statute defining the crime of bribery should receive such construction.

The crime of offering a bribe to an official ought not to be broader in its scope than the criminal liability of an official for accepting a bribe. Section 5501, R. S., describes the circumstances under which an official shall be guilty of the crime of accepting a bribe as follows:

"Every officer of the United States, and every person "acting for or on behalf of the United States, in any official "capacity under or by virtue of the authority of any de- "partment or office of the Government thereof; and every "officer or person acting for or on behalf of either House "of Congress, or of any committee of either House, or of "both Houses thereof, who asks, accepts or receives any "money, or any contract, promise, undertaking, obligation, "gratuity, or security for the payment of money, or for de- "livery or conveyance of anything of value, with intent to "have his decision or action on any question, matter, cause "or proceeding which, may at any time, be pending, or "which *may be by law* brought before him *in his official "capacity*, or in his place of trust or profit, influenced "thereby, shall be punished as prescribed in the preceding "section."

Sections 5501 and 5451 are complementary, and Section 5451 should naturally receive a construction which would confine the crime of giving a bribe to the cases which under

a bribe. The government's construction of Section 5451 would render it a crime to offer a bribe in a vast number of cases in which the acceptance would be attended with no criminal liability under Section 5501. It cannot be thought that Congress intended to provide punishment for a person giving money to an officer, and to relieve the officer of punishment under like circumstances. The use of the word "lawful" was undoubtedly intended to avoid any such inconsistency.

United States vs. *Boyer, 85 Fed., 425,* (District Court, Western District of Missouri). This case involved an indictment for an attempt to bribe an inspector of the Department of Agriculture to induce him to withhold his condemnation of certain carcasses of cattle in the defendant's packing house, which were unfit for food. The inspector assumed to exercise his duties of inspection of the packing house by authority of an appointment and under regulations of the Secretary of Agriculture, which regulations were made pursuant to an Act of Congress authorizing the inspection of meats, cattle, etc. It was held that Congress had no power to pass such an act, and that, therefore, the regulations of the Secretary of Agriculture were without authority of law, and that the crime of bribery could not be predicated upon the offer of a reward not to perform duties for the performance of which there was no legal or constitutional warrant. The Court said at p. 436: "And the question now arises * * * whether "or not to offer a person a bribe not to do something "which no valid law enjoins him to perform is an indict- "able offense under the statute. * * * In the case at "bar, had the inspector received the bribe, it would have "been no offense against the laws of the United States, for "the reason that it was intended to induce him not to do a "thing which no valid law of Congress imposed upon him "to do." The indictment in that case was under the same section under which the present indictment is found. The

inspector was acting under instructions of the Secretary of Agriculture and under the regulations of that Department; the regulations were made in pursuance of statutory authority. The acts which it was sought to induce him to perform were violations of the regulations and of his instructions. The case is a direct and positive authority for the proposition that Section 5451 is confined to inducement of officials to do or omit to do some act in violation of a duty imposed upon them by law.

In *United States* vs. *Gibson, 47 Fed., 833* (Circuit Court, Northern District of Illinois), the defendant was indicted under Section 5451 for attempted bribery of an Internal Revenue officer to burn a distillery which was located within his jurisdiction, and which he possessed by statute the right to enter. The Court held the indictment bad, saying: "It is no part of the duty of a gauger or "any other internal revenue officer to protect the distil- "lery or any of the property therein, from violence, injury "or destruction. The only duty of such officer is to see that "the spirits produced in such distillery are made to pay "the internal revenue tax imposed upon them, and there "is no Federal statute making it a criminal offense for an "internal revenue officer to set fire to a distillery, or other- "wise destroy it. It seems, therefore, to me too clear to "require argument that, if it is not a crime under the law of "the United States for an internal revenue officer to set "fire to a distillery of his own volition or impulse, without "the influence or request of another, then it is not a crime "against the United States for another person to bribe "him to do it. The statute I have quoted makes it a crime "against the United States for anyone to offer to bribe "an officer of the United States * * * to induce him "to do or omit to do an act in violation of his lawful duty; "but to bribe or induce such an officer to do an act not con- "nected with his line of duty impinges upon no United "States law and does not subject the offender to indictment

"and punishment in the United States Courts * * *
"Stress seems to be laid in the indictment upon the fact
"that the internal revenue officer mentioned in it had
"the right, by virtue of his office, to enter the distillery
"which was to be set on fire. This right of entrance may
"have made this officer a convenient person for the pur-
"poses of the defendant, if the defendant wished to have the
"distillery set on fire, but it no more brought the con-
"templated offender within the Federal cognizance than if
"the officer had been influenced by a bribe from defendant
"to murder another person who was within the distillery,
"and whom the officer could more readily have obtained
"access to by reason of his right to enter." The words of the above quotation from the Gibson case are precisely applicable to the present case; if it is not a crime under any law of the United States for a clerk in the General Land Office to divulge the contents of a Special Agent's report then it is not a crime against the United States for another person to offer him an inducement for doing it. This case is also positive authority in favor of the construction of Section 5451 for which we contend. The Government charges that by reason of the convenient access which was possessed by Harlan and Valk to the records of the General Land Office, it was a violation of their duty to reveal the contents of any of those records. It was contended by the Government in the Gibson case that by reason of the statutory authority which the inspector possessed to enter the distillery, it was a violation of his lawful duty, within the meaning of the statute, to burn the distillery, and this contention was held unsound.

In *In re Palliser*, 136 U. S., 257, the defendant was indicted under Section 5451 for attempted bribery of a postmaster to sell postage stamps on credit, and a proceeding was instituted for his removal from the Southern District of New York to the District of Connecticut for trial. The case came before this court on habeas corpus. This Court

considered the sufficiency of the indictment and held that the indictment was good, relying upon an Act of Congress prohibiting the sale of postage stamps by a postmaster except for cash. The Court said, at p. 264: "The promise "to a public officer that if he will do a certain unlawful "act he shall be paid a certain compensation is an offer "to bribe him to do an unlawful act." Apparently from this quotation this Court in the Palliser case construed Section 5451 as confined to the inducement of officials to do acts which are unlawful.

(c) *No law is alleged or exists prescribing that it shall be the duty of clerks in the General Land Office to maintain secrecy in reference to reports of Special Agents.*

There is no reference in the indictment to any law making the reports of Special Agents secret. No such reference could be made, for no law of that character exists.

Macey, the Chief Clerk of the Land Office, was called as a witness for the Government. He testified that in the due course of business such reports were secret and confidential (Rec., p. 40), and that it would be contrary to the duty of any clerk in the office to divulge the contents of such reports (Rec., pp. 43, 46). This testimony added nothing to the indictment. It was no more than a statement of his conclusions. Upon his cross-examination (Rec., pp. 47 to 52) he stated that he knew of no statute or rule or regulation establishing any such duty. Harlan, a Government witness, testified (Rec., p. 142) that he knew of no statute of the United States making it the duty of agents to keep those matters secret. Counsel for the Government was unable to cite any act of Congress upon the point in question.

(d) There is no allegation of any rule, regulation or order prescribing that it shall be the duty of clerks in the

Land Office to maintain secrecy in reference to reports of Special Agents, or making such reports secret and confidential, and the Government's evidence shows that no such rule, regulation or order existed.

The indictment is devoid of any allegation that a rule, regulation or order had been promulgated by the Secretary of the Interior or by the Commissioner of the General Land Office prohibiting the disclosure of contents of Special Agents' reports, or of any other records of the Department or of the General Land Office. The indictment alleges that the report when transmitted to the Secretary of the Interior would be for the exclusive consideration and use of the proper officers of the Department of the Interior and of the General Land Office. It does not allege that the Secretary of the Interior or any other person in authority so ordered. The indictment alleges specifically that Harlan's duties as chief of the Special Service Division were to protect the public lands, to supervise the work of Special Agents, prepare instructions to such Special Agents and receive their reports. It does not allege that his duties were defined by any rule or regulation, and this fact cannot be properly implied from the allegation that he was "acting on behalf of the said United States in an official function under and by authority of the said Department, under the laws and the regulations theretofore and then pursuant to law prescribed and promulgated by the Secretary of the Interior of the said United States." But even if this inference could be drawn the fact that he was charged with the designated duties has no tendency to prove that there was any rule regulation or order of the Department enjoining secrecy in department and office matters.

The testimony of the Government's own witnesses affirmatively shows that no such rule, regulation or order existed. Chief Clerk Macey testified (Rec., pp. 47, 52) that he knew of no statute, or rule, or regulation as to Har-

lan's duties; that if there was such a rule or regulation he would know it; that he did not think there were any written instructions from the Secretary in regard to the duties of clerks and employees in the Land Office, or any written rules or regulations of the Commissioner of the General Land Office in reference thereto; that when he testified to the duties of such employees he was speaking of duties which are prescribed orally or by general custom or practice in the office (Rec., pp. 50, 51); that he did not know of any general verbal instructions about the duties of clerks, but that the clerks were subject to orders from day to day (Rec., p. 51).

Harlan testified that he knew of no written rule or regulation of the Department making secrecy a duty in these matters; that it was the rule and practice of the office and that the practice was established by oral declarations of the Commissioner in individual cases when people applied for permission to examine the records (Rec., pp. 143, 144).

(e) *If it can be presumed in the absence of definite allegations to that effect, and in the face of the evidence to the contrary, that some rule or regulation had been prescribed and promulgated by the Secretary of the Interior or the Commissioner of the General Land Office, prohibiting the publication of the contents of Special Agents' Reports, nevertheless, such a rule, regulation or order, even if formally promulgated, could not in any event lay the basis for a criminal prosecution.*

Although the indictment does not allege that reports of Special Agents were declared to be secret and confidential by any rule, regulation or order of the Secretary of the Interior or Commissioner of the General Land Office, or that employees of the department were prohibited to publish the contents of reports by any such rule or regula-

tion, and although the evidence shows that no such rule or regulation existed, nevertheless, if the promulgation of rules and regulations in the premises be assumed, they would not create a lawful duty, an inducement to violate which would furnish a foundation for a conviction of bribery. Assuming for the sake of argument that a positive prohibition of publication by any employee of the contents not only of reports and records in general, but of this particular report, had been made by the Secretary of the Interior or the Commissioner of the General Land Office and promulgated with the formality necessary to constitute it a regulation of the department, nevertheless, under the decisions of this Court a crime could not be predicated upon the violation of that regulation.

Congress may delegate power to department officers to make regulations, which, if made pursuant to that authority and in supplement of the Act of Congress, will have the force of law. In *In re Kollock, 165 U. S., 526,* it appeared that Congress had authorized the Commissioner of Internal Revenue to prescribe the brands and marks for oleomargarine and declared it a crime to sell oleomargarine not so marked. It was held that violations of the regulations of the Commissioner in this respect constituted a crime since the crime was declared by Congress and the department regulation was merely in execution thereof or supplementary thereto.

But regulations made by an executive officer or department not thus specifically authorized by Congress cannot form the basis of a criminal prosecution, when Congress has not specifically declared that their violation shall be criminal. Congress cannot delegate its power to prescribe what acts or omissions shall constitute crimes. In *United States* vs. *Eaton, 144 U. S., 677,* a violation of a department regulation was involved. The Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, had prescribed a regulation requiring

all wholesale dealers in oleomargarine to keep a book in a certain form and make monthly returns showing the oleomargarine received and its disposition. This regulation was made pursuant to an Act of Congress regulating the manufacture, sale, etc., of oleomargarine, which contained a provision, Section 18, that "If any manufacturer of oleomargarine, any dealer therein or any importer or exporter thereof, shall knowingly and wilfully neglect, omit or refuse to do, or cause to be done, any of the things required by law in the carrying on or the conducting of his business, or shall do anything by this Act prohibited, if there be no specific penalty or punishment imposed by any other section of this Act for the neglecting, omitting or refusing to do, or for the doing or causing to be done, the thing required or prohibited, he shall pay a penalty of $1,000." Another provision of the act authorized the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to make all needful regulations for the carrying into effect of this act. The question before this Court was whether the failure of a wholesale dealer in oleomargarine to keep books and render returns as prescribed by the regulation of the Commissioner rendered him liable to the penalty prescribed by Section 18, in having omitted or failed to do a thing "required by law in the carrying on or conducting of his business," within the meaning of that section. It was held by this Court that the regulation prescribed by the Commissioner of Internal Revenue, under the general grant of authority, was not sufficient to subject one violating it to punishment under Section 18. The Court said, p. 687: "It was said by this "Court in *Morrill* vs. *Jones, 106 U. S., 466, 467*, that the "Secretary of the Treasury cannot by his regulations alter "or amend a Revenue law, and that all he can do is to "regulate the mode of proceeding to carry into effect what "Congress has enacted * * * Much more does this "principle apply to a case where it is sought substantially

"to prescribe the criminal offense by the regulation of a "Department. It is a principle of criminal law that an "offense which may be the subject of criminal procedure "is an act committed or omitted 'in violation of a public "law either forbidding or commanding it' (4 Am. & Eng. "Encyc. of Law, 642; 4 Bl. Com., 5). It would be a "very dangerous principle to hold that a thing prescribed "by the Commissioner of Internal Revenue as a needful "regulation under the Oleomargarine Act, for carrying it "into effect, could be considered as a thing 'required by "law' in the carrying on or conducting of the business of a "wholesale dealer in oleomargarine in such manner as to "become a criminal offense punishable under Section 18 "of the Act. * * * It is necessary that a sufficient statu- "tory authority should exist for declaring any act or "omission a criminal offense; and we do not think that the "statutory authority in the present case is sufficient. If "Congress intended to make it an offense for wholesale "dealers in oleomargarine to omit to keep books and ren- "der returns as required by regulations to be made by the "Commissioner of Internal Revenue, it would have done "so distinctly in connection with an enactment such as "that above recited, made in Section 41 of the Act of Oc- "tober 1, 1890. Regulations prescribed by the President "and by the heads of departments under authority granted "by Congress may be regulations prescribed by law, so as "lawfully to support acts done under them and in accord- "ance with them, and may thus have in a proper sense the "force of law; but it does not follow that a thing re- "quired by them is a thing so required by law as to make "the neglect to do the thing a criminal offense in a citizen, "where the statute does not distinctly make the thing in "question a criminal offense."

See also *United States* vs. *Maid, 116 Fed., 650.*

In *United States* vs. *Manion, 44 Fed. R., 800,* an indict-

ment for perjury was involved, the oath being one required by the regulation of the Commissioner of the Land Office. A demurrer to the indictment was sustained, the Court saying. "Perjury can only be assigned upon an oath au- "thorized by a law of the United States. "Law,' according "to the most familiar definition of that term, is a rule pre- "scribed by the supreme power in the nation. Now, the "Commissioner of the General Land Office is not the su- "preme power in the United States. He does not create the laws of the United States, and he cannot be endowed with "power to do so * * * he may exact from all who "transact business in his bureau * * * compliance with "the rules and regulations which he is authorized to make, "but he cannot prescribe a rule which can have the force "of a law in the United States, and the violation of which "can be punishable as a felony."

The broad principles declared in the foregoing cases that a crime cannot be predicated upon a mere regulation of a department officer not deriving its validity from the authority of Congress, is conclusive in this case. Section 5451 declares it bribery to induce another to commit an act in violation of his lawful duty. His lawful duty can be constituted only by authority of Congress. Violation by an employee of department orders and regulations may subject the employee to discipline or dismissal, but cannot subject him to criminal prosecution, and no violation by an employee of any such regulation is a violation of the employee's lawful duty within the meaning of Section 5451.

(f) The record shows, at most, that if the report of the special agents should be made, and if it should thereafter be filed in the Land Office, Harlan and Valk might have had access thereto, and that it would be contrary to the practice of the General Land Office to reveal its contents. But bribery cannot be predicated upon such premises.

Reduced to the last analysis, the above is the whole case of the Government. The proposition is simply that because it was the practice in the Land Office not to permit the public to examine special agents' reports, and because Harlan and Valk might, by reason of their employment, have access to the reports when, and if, they should be referred to that office, it was their lawful duty to keep the report secret, and that to offer them a consideration to reveal the contents of the report would be bribery. Even this proposition depends upon two conditions, namely, first, that the report should be made, and second, that it should be referred by the Secretary of the Interior to the Land Office and there filed; unless these conditions should be fulfilled, none of the employees would ever have access to it. The mere statement of this proposition is sufficient to show how utterly unfounded is the Government's case.

The fact testified by Harlan (Rec., p. 143) that the Commissioner usually refused applications for examination of special agents' reports, may have implied to the clerks who had any official functions to exercise over such reports a moral duty to keep them secret, and the publication thereof under such circumstances might involve a breach of morals, or honor, or office discipline. But while, as alleged in the first three counts, Harlan, when acting as Chief of the Special Service Division, had supervision of the special agents' reports on investigations initiated by him, it does not appear that this report to the Secretary of the Interior would ever be within his official functions, and it affirmatively appears that at the times alleged in these first three counts the report was not in existence. The remaining counts rest solely upon the allegations that Harlan and Valk were clerks in the office, and so would have access to any of the office records; but it appears that they would have no official function to exercise regarding special agents' reports.

Even as to Harlan's position as Chief of the Special

Service Division, it is preposterous to contend that it would constitute a violation of a lawful duty for him to reveal the contents of the report, since no law exists imposing this duty upon him. Such a contention could be extended to the most astounding lengths. This contention, logically pursued, would include the proposition that any trivial temporary orders or instructions made by Department or Bureau officers from day to day in the enforcement of office discipline would constitute the lawful duty of employees, and therefore, lay the foundation for a prosecution and conviction for an infamous crime.

And the proposition that because Harlan and Valk had access to the reports, it was a violation of their lawful duty to disclose their contents, is more than preposterous. Their act would not be an act committed in their official capacity in any case brought before them *by law,* and therefore, they would not be guilty of the crime of accepting a bribe under Section 5501. Where it is no crime to accept a bribe, it is no crime to give it. To constitute the crime of bribery the act induced must be one done in the course of the official's lawful duty and in his official capacity. If the appellant had hired some person not connected with the Government service to break and enter the Land Office and steal the report, the inducement would not have constituted bribery. And to hire an employee of the office to obtain information of a report which is not within the employee's jurisdiction of official functions, does not differ in principle. Harlan testified (Rec., p. 139) that he had no access to any report after April in the ordinary course of business; that he expected to get it from Mr. Steece, one of the special agents, and that in so doing his act would have been outside of his duty as a clerk in the Land Office. He testified as to the December transaction that he presumed he could not obtain the stenographer's notes of the investigation unless he stole them (Rec., p. 132). An employee of the office would undoubtedly be

a more convenient agent for such a purpose than a person not connected with the office, because of his greater opportunity for access to the reports; but this does not bring the person dealing with such employee within the bribery law.

United States v. *Gibson*, 47 *Fed.*, 833.

This indictment is founded on the principle which received this Court's condemnation in the Eaton case, *supra*. There is was sought to impose on a dealer in oleomargarine a fine for violation of a formal regulation of the Commissioner of Internal Revenue. Here it is sought to imprison the appellant for inducing an employee to violate what is said to be a custom or practice of the Land Office. In the Eaton case, Congress had empowered the Commissioner to make the regulation in question. In this case, the alleged practice in the Land Office is constructed upon verbal rulings and directions of the Commissioner—not authorized by Congress. In the Eaton case, Congress had prescribed a fine for the omission of a thing required by law of a dealer in oleomargarine. Here Section 5451 prescribes imprisonment as the punishment for inducing a violation of an official's lawful duty. Yet the Court held in the Eaton case that it would be a dangerous principle to consider things prescribed by the formal regulations of the Commissioner of Internal Revenue as things required by law, in such a manner that their breach could be treated as a criminal act and subject the offender to a fine. How then can it be contended that a practice or custom of the Land Office can create a lawful duty, such that one who induces another to violate that custom can be held guilty of a crime and subjected to imprisonment?

POINT FIFTH.

Section 1014 R. S. does not authorize a removal to the District of Columbia. The District of Columbia is not a district and the Supreme Court of the District of Columbia is not a Court of the United States, within the meaning of that section. Appellant being committed for removal to the District of Columbia, is, therefore, deprived of his liberty without due process of law.

It requires no argument to show that the appellant's detention for removal to the District of Columbia for trial in the Supreme Court thereof, if no law sanctions such a removal from one of the Federal judicial districts, is a deprivation of liberty without due process of law.

Section 1014, R. S., which is the only authority asserted for this removal proceding, reads as follows:

"Sec. 1014. For any crime or offense againat the "United States the offender may, by any justice or judge "of the United States, or by any commissioner of a Circuit "Court to take bail, or by any chancellor, judge of a Su- "preme or Superior Court, chief or first judge of Common "Pleas, mayor of a city, justice of the peace, or other "magistrate, of any State where he may be found, and "agreeably to the usual mode of process against offenders "in such State, and at the expense of the United States, "be arrested and imprisoned, or bailed, as the case may "be, for trial before such court of the United States as by "law has cognizance of the offence. * * * And where "any offender or witness is committed in any district other "than that where the offense is to be tried, it shall be the "duty of the judge of the district where such offender or "witness is imprisoned, seasonably to issue, and of the "marshal to execute, a warrant for his removal to the dis- "trict where the trial is to be had."

The section does not authorize arrest for trial in State, territorial or municipal courts, nor does it authorize removal to any locality that is not organized as a district of the Federal judicial system.

Section 1014 R. S., is taken from Section 33 of the Judiciary Act of 1789 (1 Statutes at Large, page 91).

Section 33 of the Judiciary Act provided that

"for any crime or offense against the United States, the of-
"fender may, by any justice or judge of the United States,
"or by any justice of the peace, or other magistrate of any
"of the United States where he may be found, agreeably
"to the usual mode of process against offenders in such
"State, be arrested, and imprisoned or bailed, as the case
"may be, for trial before such court of the United States
"as by this act has cognizance of the offense. And
"copies of the process shall be returned as speedily as
"may be into the clerk's office of such court, together with
"the recognizances of the witnesses for their appearances
"to testify in the case, which recognizances the magis-
"trate before whom the examination shall be, may re-
"quire on pain of imprisonment. And if such commit-
"ment of the offender or the witnesses shall be in a dis-
"trict other than that in which the offense is to be tried,
"it shall be the duty of the judge of that district where the
"delinquent is imprisoned, seasonably to issue, and of the
"marshal of the same district to execute, a warrant for
"the removal of the offender and the witnesses, or either
"of them, as the case may be, to the district in which the
"trial is to be had. And upon all arrests in criminal
"cases, bail shall be admitted, except when the punish-
"ment may be death, in which case it shall not be ad-
"mitted but by the Supreme or a Circuit Court, or
"by a justice of the Supreme Court, or a judge of a
"District Court, who shall exercise their discretion therein
"regarding the nature and circumstances of the offense,
"and of the evidence and the usages of law. And if a
"person committed by a justice of the Supreme or a judge
"of a District Court for an offense not punishable with
"death, shall afterwards procure bail, and there be no
"judge of the United States in the district to take the
"same, it may be taken by any judge of the Supreme or
"Superior Court of law of such State."

A comparison of this section of the Judiciary Act with Section 1014, R. S., shows that they are substantially the same, except that Section 33, Judiciary Act, provides for arrests and removals for trial "before such court of the United States as by this act has cognizance of the offense," while Section 1014, R. S., provides for arrests and removals for trial "before such court of the United States as by law has cognizance of the offense," and except that Section 33, Judiciary Act, contained provisions regarding admission to bail in criminal cases which are not contained in Section 1014, but are continued in Sections 1015 and 1016, R. S.

The districts which were within the contemplation of Section 33 of the Judiciary Act were obviously only the Federal judicial districts into which the United States was divided by the Judiciary Act, and the courts of the United States which were within the contemplation of that section were only the Circuit and District Courts of the Federal judicial system created by that Act. The provision of Section 33, expressly limiting the scope of the section to arrests and removals having as their object a trial in some court created by the Judiciary Act conclusively shows that the phrase "courts of the United States" therein employed was intended to include only the circuit and district courts of the Federal judicial system created thereby.

(a) *The District of Columbia did not exist at the time of the enactment of Section 33 of the Judiciary Act and was not, therefore, within its contemplation. It has never been constituted or included within one of the Federal judicial districts and is not, therefore, within the provisions of the present section.*

By Act of February 21, 1871, 16 Statutes, 426, the District of Columbia was created a body corporate for municipal purposes. By the Act of June 11, 1878, 20 Statutes, 102, it was provided that the District of Columbia shall remain and continue a municipal corporation.

See also *District of Columbia* vs. *Woodbury*, 136 U. S., 450; *Metropolitan Railroad Co.* vs. *District of Columbia*, 132 U. S., 1.

The District of Columbia is not, therefore, a district to which offenders elsewhere arrested in the United States may be removed for trial under Section 1014, unless the District of Columbia has been brought within the provisions of Section 1014 by some subsequent legislation. The only Acts of Congress which are claimed to have had that effect are the Act of February 21, 1871, 16 Statutes, 426, and the Act of June 22, 1874, §396 (18 Stat., 193). The former Act, that of February 21, 1871, Chapter 62 (Section 93, Revised Statutes of the District of Columbia) provides as follows:

"The Constitution and all laws of the United States "which are not locally inapplicable shall have the same "force and effect within the District of Columbia as else- "where within the United States."

Judge Lacombe in this case below concurred in the contention that the word "district" as used in the original enactment of this section, applied to the judicial districts into which the United States was divided by the Judiciary Act, but concluded that the section of the Act of 1871 above quoted made the provisions of Section 1014 applicable to the District of Columbia and authorized a removal from one of the judicial districts thereto. Judge Lacombe said: "This places the District of Columbia, so far as practi- "cable, on an equality of privilege with the various States "and judicial districts of the rest of the country. One of "the privileges of a judicial district is to have persons who "within its borders offend against the laws of the United "States returned from any other district to itself for trial "before the appropriate Federal Court sitting therein. "That privilege is made practically available by Section "1014, and by the Act of 1871 the provisions of that section " 'have the same force and effect within the District of Co-

"lumbia as elsewhere in the United States'" (130 Fed. Rep., 488; Rec., p. 206).

The language of the Act of 1871 does not justify the conclusion of the learned Judge below. The provisions of the 33d Section of the Judiciary Act were locally inapplicable to the District of Columbia, because that section referred only to judicial districts of the United States, and the District of Columbia did not come within that description. The express terms of the Act of 1871 preclude the possibility of this construction. It provides that all laws not locally inapplicable shall have the same force and effect *within* the District of Columbia as elsewhere. But the granting of a warrant of removal under Section 33 of the Judiciary Act in the Southern District of New York, or some other judicial district, is manifestly not giving the provisions of that section force and effect within the District of Columbia. It might with more reason be argued that to arrest an offender in the District of Columbia under this section for removal to some other jurisdiction would be giving the provisions of Section 33 of the Judiciary Act force and effect *within* the District of Columbia. But the language of the Act of 1871 is not capable of even this construction.

The subsequent enactment of the Act of June 22, 1874, conclusively shows that it was not the understanding of Congress that the Act of 1871 extended the application of Section 33 of the Judiciary Act to the District of Columbia, even to the extent of authorizing the arrest of offenders within the District of Columbia for removal to other jurisdictions. The Act of June 22, 1874, Section 2, provides as follows:

"The provisions of the thirty-third section of the Ju-
"diciary Act of seventeen hundred and eighty-nine shall
"apply to courts created by Act of Congress in the Dis-
"trict of Columbia."

Had it been intended or supposed by Congress that

the removal statute was made applicable to the District of Columbia in any respect by the Act of 1871, the section of the Act of 1874 last quoted would not have been enacted. The error in the opinion of the Court below in this respect is, therefore, apparent.

But even this Act of 1874 does not make the provisions of the 33rd Section of the Judiciary Act or its successor, Section 1014, R. S., in all respects or for all purposes applicable to the District of Columbia. It may grant to the judges of the courts created by Act of Congress in the District of Columbia power to arrest and remove offenders there found for trial in other jurisdictions. It undoubtedly applies the provisions regarding the admission to bail contained in the 33rd Section of the Judiciary Act, which were omitted in the enactment of Section 1014, R. S., to the courts of the District of Columbia; but it does not authorize the removal of persons arrested in some judicial district of the United States to the District of Columbia.

This Act of June 22, 1874, Chapter 396, was approved on the same day as the Revised Statutes containing Section 1014. The Revised Statutes were a consolidation and revision of the statutes in force on December 1, 1873 (Section 5595, R. S.). Section 5601, R. S., provides: "The enactment of the said revision is not to affect or re-"peal any Act of Congress passed since the first day of "December, One thousand eight hundred and seventy-"three, and all Acts passed since that date are to have "full effect as if passed after the enactment of this re-"vision, and so far as such Acts vary from or conflict "with any provision contained in said revision, they are "to have effect as subsequent statutes and as repealing "any portion of the revision inconsistent therewith." The Act of June 22, 1874, Chapter 396, does not refer to Section 1014, R. S., but to Section 33 of the Judiciary Act; and since the provisions of Section 33 differed from the

provisions of Section 1014, R. S., it must be presumed by virtue of Section 5601, R. S., above quoted, that this Act intended to make applicable to the courts of the District of Columbia the provisions of the Thirty-third Section of the Judiciary Act rather than the provisions of its successor, 1014, R. S. And the provisions of Section 33 of the Judiciary Act which were most applicable to the courts of the District of Columbia are those provisions regarding admission to bail in criminal cases, which are not embodied in Section 1014, R. S.

By Section 5596, R. S., the provisions of Section 33 of the Judiciary Act were repealed, and Section 1014, R. S., came into force in lieu thereof, in the Federal judicial districts, and the courts of those districts became subject to the provisions of Section 1014, R. S., as to removals. But it was seen that there was thus no provision of law applicable to District of Columbia courts in removal cases before those courts. Therefore, Congress passed c. 396 of the Laws of 1874, providing that Section 33 of the Judiciary Act shall apply to courts of the District of Columbia. This being enacted after December 1, 1873, had and has full effect upon District of Columbia courts. Hence, a proceeding in one of those courts is governed by Section 33, and a proceeding in a court of a Federal district is governed by Section 1014, R. S. And if, as we contend, Section 1014, R. S., does not authorize a Federal district court to remove a prisoner to the District of Columbia, its jurisdiction to perform such an act is in no way extended by c. 396 of 1874.

Furthermore, by the enactment of Chapter 396 of 1874, Congress interpreted Section 1014, R. S. Congress recognized that the District of Columbia not being a Federal district, was not within the scope of Section 1014, R. S. For if it had been considered by Congress that 1014, R. S., applied to the District of Columbia, there would have been no need to enact Chapter 396 of 1874. The fact that Con-

gress made an insufficient law to provide for removal of prisoners to the District of Columbia, in no way affects its recognition of the defect in Section 1014, R. S.

Less than six months after the above Act of 1874, Chapter 396, was enacted, the United States Senate adopted a resolution instructing the Committee on the Judiciary to inquire into the extent and meaning of the Act of June 22, 1874, c. 396, and particularly whether under the provisions of that Act, persons charged with libel or other crime in the District of Columbia could be brought from a State or other place within the Federal jurisdiction to said District of Columbia to answer therefor.

We have been informed that this resolution arose out of the then existing political conditions, it having been proposed to bring into the District of Columbia many newspaper editors who were accused of libelling officers of the administration. The subject of the resolution was considered of great importance, and the action of the Judiciary Committee upon the resolution was by no means perfunctory.

On February 16, 1875, the Judiciary Committee of the Senate, consisting of Senators Edmunds, Conkling, Frelinghuysen, Wright, Thurman and Stevenson, reported that the Act of June 22, 1874, confers on the District of Columbia courts the power to arrest offenders found in the District, who have committed crimes against the United States in some judicial district of the United States, and to send them to such district for trial; but that no person can be brought into the District of Columbia under the provisions of this Act, either for libel or any other crime. In the opinion of the Committee, the 33d Section of the Judiciary Act embraced only the judicial districts of the United States created by Acts of Congress in the several States.

For the convenience of the Court, we take the liberty of quoting herewith in full the report of the Judiciary Committee.

43d Congress 2d Session. SENATE. Report No. 658.

IN THE SENATE OF THE UNITED STATES.

February 16, 1875. Ordered to be printed.

Mr. Edmunds, from the Committee on the Judiciary, submitted the following

REPORT:

The Committee on the Judiciary respectfully report:

That on the 15th of December, 1874, the Senate adopted the following resolution:

Resolved, That the Committee on the Judiciary be instructed to inquire into the extent and meaning of the Act of June 22, 1874, entitled "An Act conferring jurisdiction upon the criminal court of the District of Columbia, and for other purposes," and particularly whether under or by its provisions persons charged with or indicted for libel or other crime in the said District of Columbia, can be brought from a State or other place within Federal jurisdiction to said District, to answer therefor; and, also, whether said act has any application to prosecution or indictment for the crime of libel in any case, and report thereon.

In obedience to this resolution the committee have carefully examined the subject.

The Act of June 22, 1874, entitled "An Act conferring jurisdiction upon the criminal court of the District of Columbia, and for other purposes," is in the following words:

"Be it enacted by the Senate and House of Represen-"tatives of the United States of America in Congress as-"sembled, That the criminal court of the District of Co-"lumbia shall have jurisdiction of all crimes and misde-

"meanors committed in said District not lawfully triable "in any other court, and which are required by law to be "prosecuted by indictment or information.

"Sec. 2. That the provisions of the thirty-third section "of the judiciary act of seventeen hundred and eighty-nine "(1789), shall apply to courts created by act of Congress "in the District of Columbia."

It having been considered that the provision in the Act of June 17, 1870, establishing a police court in the District of Columbia, which conferred exclusive jurisdiction upon it of "all offences against the United States not deemed capital or otherwise infamous," and which did not provide for trials by jury, were in violation of of that clause in the Constitution which declares that "the trial of all crimes except in cases of impeachment, shall be by jury," the first section of the act above quoted was passed in order to prevent a failure of justice in respect of a large class of crimes committed in the District, by giving the criminal court, with its jury, jurisdiction of such of them as under the Constitution could not, for the reason already stated, lawfully be tried in the police court.

By the second and only other part of the act in question it is declared "that the provisions of the thirty-third section of the Judiciary Act of seventeen hundred and eighty-nine (1789), shall apply to courts created by act of Congress in the District of Columbia."

The thirty-third section of the Act of 1789 referred to is in the following words:

(Quoting section in full.)

As the Act of June 22, 1874, mentioned in the resolution of the Senate, only extended to the courts of the District of Columbia the provisions of the section just quoted, it follows that the inquiry is reduced to the simple question, what are the provisions of that section

which has been the law of the land for more than eighty years.

They are simple and clear.

1st. The crime or offense upon which the section acts must be one against the United States.

2d. The offender can only be arrested upon the warrant of a court or judge of the State or district where he may be found. No court or judge can issue a warrant to arrest the offender in any other State or district.

3d. If the offender be thus arrested for an offense against the United States, and be brought before the court or judge of the district where he was arrested, he may be held for trial before such court of the United States as, by the Act of September 24, 1789, had cognizance of the offense.

4th. The only courts having cognizance of any offense or case by that act are:

1. The Supreme Court of the United States.

2. The Circuit Courts of the United States established in the various States.

3. The District Courts of the United States established in the various States.

No State court and no territorial court has by that Act any jurisdiction whatever for the trial of any cause, civil or criminal.

If it appears, when the offender is thus arrested and brought before the court or judge of the district of his arrest, that the offense was committed in some other district, it is made the duty of the judge to cause him to be removed to the district in which the offense was committed; the Constitution requiring all criminal trials to be in the district in which the offense was committed. It is scarcely necessary to say that the districts mentioned are

the judicial districts of the United States created by Acts of Congress in the several States.

The section gives no power to a court or judge to send for or bring a person charged with crime *into* his district or jurisdiction under any circumstances. The authority given in this respect is only to remove the person charged *from* the district in the cases named.

The sum of the matter, therefore, is, that the second section of the Act of June 22, 1874, confers upon the courts of the District of Columbia the power to arrest offenders found in the District who are charged with crime committed within the District, and hold them for trial (which was the law before), and to arrest offenders found in the District who have committed crimes against the United States in some judicial district of the United States, and to send them to such district for trial. And that is all. No person can be brought into the District of Columbia under it, either for libel or any other cause, and the committee are of opinion that both the sections of the Act are necessary and proper, and in perfect accordance with the principles of justice and the course of civilized jurisprudence. Without provisions of this character the District of Columbia would be an asylum for offenders committing crimes against the laws of the United States and escaping hither.

It only remains to report, as directed by the resolution of the Senate, "whether said Act has any application to prosecution or indictment for the crime of libel in any case."

We are of opinion that, as before stated, no person charged with the crime of libel can be brought into the District of Columbia under it, for no person can be brought here under it for any crime whatever.

And it is equally plain that no person charged with the crime of libel in any other district or place in the United States can be arrested here and sent to such district or place under it, for,

1st. Libel is not a crime against the laws of the United States in any of the States, so that no case could arise in which a court or judge in the District of Columbia could be called upon to arrest a person here and send him to any State for trial for libel.

It should be here observed that the jurisdiction of the courts of the United States in criminal cases is confined to offenses created by the statutes of the United States.

No offense at common law is indictable or triable in the courts of the United States. This was early determined by the Supreme Court of the United States, and is the settled law of the land (Public Statutes, United States vs. Hudson, 7 Cranch., p. 32; Bishop's Criminal Law, Sec. 199).

2. If in any Territory libel is a crime by its laws, and if such laws could be held for such purposes to be the laws of the United States, the Act under consideration provides no aid in sending a person from this District to such Territory, for the 33d Section of the Act of 1789 has no application whatever to the Territories.

The result is that the Act of June 22, 1874, is not, in our opinion, obnoxious to any criticism; and, in respect of the crime of libel, it confers no power either to bring a person charged with it into the District of Columbia or send him out of it.

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GEO. G. WRIGHT.
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J. W. STEVENSON.

We submit that no better expression of legislative intent could be desired or imagined than is contained in the foregoing report of the Senate Judiciary Committee.

The most thorough consideration of this question by any Court is that of District Judge Brown of the Southern District of New York, *In re Dana*, 68 Fed., 886, 898. That case was before the District Judge on an application for the removal of Charles A. Dana to the District of Columbia for trial on an indictment for libel. The warrant of removal was refused. It is true that Judge Brown decided that libel was not a removable offense, but his careful and extended consideration of the question of the right to remove a person to the District of Columbia for any crime entitles his opinion upon this point to great weight. Judge Brown reached the conclusion that the District of Columbia is not a District to which offenders can be removed under Section 1014, and that the operation of that section has not in this respect been extended by the Act of June 22, 1874. Judge BROWN said, at page 900:

"The scope and aim of the Judiciary Act were mani-
"festly purely federal and national. * * * The only
"subject of consideration was the national federal courts
"and trials in those courts alone.

* * * * * * *

"At that time a territorial government and territorial
"Courts had been organized under the Ordinance of 1787
"in the Northwest Territory. But no one would contend
"that mere local offenses committed in that territory, and
"not embraced in any general legislation of Congress, were
"removable offenses under the Judiciary Act, any more
"than that its territorial Courts were 'Courts of the
" 'United States' in the sense of the Judiciary Act or of
"ordinary legislation. When the District of Columbia
"was afterwards acquired, its Courts and local offenses
"under the local law alone, were in the same category as
"those of the territories. That none of those Courts were
" 'Courts of the United States' in the sense of ordinary
"legislation has been long adjudicated, because they do
"not belong to the Federal system, and are not Courts of

"the Constitution, nor created under the judicial power, "but under a separate authority in the Constitution, to "make 'all needful rules and regulations for the terri- "tories' (Art. 4, Sec. 3), and to 'exercise exclusive legis- "lation over the seat of government.' (Art. 1, Sec. 8.)

* * * * * * *

"That offenses under the local law of the District of "Columbia are not embraced in Section 33, also results "necessarily from its particular provisions. The commit- "ment and removal are by that section required to be (1) "to the proper 'district,' *i. e.*, to one of the Federal judic- "ial districts; and the District of Columbia is not such a "district; * * * (2) for trial of a 'Court of the United "States,' which (3) has cognizance of the offense by virtue of "'that act'; and the courts of the District of Columbia, "as above stated, are neither 'courts of the United States' "in the sense of the Judiciary Act nor do they derive "their authority from the Judiciary Act."

Judge BROWN said, in reference to the Act of 1874:

"The statue last cited is so vague that it is difficult to "determine its intention or effect. It is more noticeable "for what it omits than what it contains. It does not "make the District of Columbia a Federal District; nor "declare that offenders may be removed thither in like "manner as to other Federal Districts, nor removed "thither for violation of the local law, nor does it pur- "port to enlarge the class of offenses contemplated by "Section 33. It is, therefore, immaterial here. It does "not even make the provisions of Section 33 applicable in "general to the district; but only to 'courts created by "Congress in the District of Columbia.' No one court is "specified. It extends, therefore, to all the courts, from "the highest to the lowest. What provisions of Section "33 can be made applicable to all the courts of the Dis- "trict of Columbia? Apparently, those only by which "all the judges and magistrates of the courts in the sev-

"eral states are authorized to act as committing magis-
"trates. This, I think, is its only effect, and it has been
"so held by Treat, J. See *In re* Buell, 3 Dillon, 116."

Judge Brown quoted the report of the Senate Judiciary Committee and concurred in its conclusions, and further expressed the opinion that the enactment of Section 1014 on the same day as the Act of June 22, 1874, warranted the inference that Section 1014 was not intended or understood by Congress to apply to the District of Columbia.

In *United States* v. *Burr*, 25 Fed. Cas., No. 14,674a, Mr. Chief Justice Marshall, sitting as a committing magistrate in Virginia, refused to commit the defendant for removal to the Territory of Mississippi upon the ground that he possessed no power to commit for removal to a territory.

In *United States* v. *Guiteau*, 1 Mackey, 563, Judge Cox held that Section 731 R. S., providing for the trial of offenses begun in one judicial circuit and completed in another, had no application to offenses commenced in the District of Columbia and completed in a state, since the District of Columbia is not a judicial district. Judge Cox considered also the effect of the Act of February 21, 1871 (Sec. 93, Rev. Stat. District of Columbia), declaring that all laws not locally inapplicable shall have the same force and effect in the District of Columbia as elsewhere, and held that it did not extend the operation of Section 731 to the District of Columbia. He said, at page 565: "The provision, there-
"fore, for the punishment of offenses begun in one judicial
"circuit and completed in another can have no appli-
"cation to offenses begun in the District of Columbia
"and completed within a state. * * * Nor is any
"help to the opposite view to be derived from Section 93
"of the Revised Statutes of the District of Columbia,
"which enacts that the Constitution and all the laws of

"the United States not locally inapplicable shall have "the same force and effect within the District of Colum- "bia as elsewhere within the United States. An act di- "rected at offenses committed within a judicial circuit or "district has precisely the same effect as if it had de- "scribed the states or portions of states composing the "same. If it speaks of an offense, *e. g.*, begun in the "first circuit and completed in the second, it is as if it "described the very states embraced in each. Such a "law would, of course, be locally inapplicable to the Dis- "trict of Columbia; as much so as a law to punish smug- "gling in California. The only legislation which could "effect the application of Section 731 would be that which "would create in the District of Columbia a judicial cir- "cuit or district."

The reasoning of the judges in the foregoing cases is sound and conclusive. It cannot be disputed that Section 33 of the Judiciary Act referred only to Federal judicial districts, and that its successor, Section 1,014, R. S., is no broader in its scope. The Act of 1874 does not authorize a removal to the District of Columbia. The construction placed upon it by the Judiciary Committee is as conclusive as if this explanation of its intent had been incorporated in the Act. The Act can be given effect as empowering judges of the Courts of the District of Columbia to act as committing magistrates and to remove prisoners from the District without extending its scope to removals into the District. It does not by its terms make the removal statute applicable to offenses committed in the District, but only to the courts of the District. The enactment of the Act of 1874 referring specifically to the thirty-third section of the Judicary Act is also conclusive proof that the Act of February 21, 1871, was not deemed to extend the operation of the removal statute to the District of Columbia in any respect, and the removal statute is in any event locally inapplicable to the District of Columbia and not within the terms of the Act of 1871.

(b) The Supreme Court of the District of Columbia is not a court of the United States within the meaning of Section 1014, R. S. (or its predecessor, Section 33 of the Judiciary Act).

The "courts of the United States" named in the removal statute are the courts of the Federal judicial system, the constitutional courts created by Congress in the exercise of the authority given in Article III of the Constitution, Section 1, providing that "the judicial power "of the United States shall be vested in one Supreme "Court and in such inferior courts as the Congress may "from time to time ordain and establish." A court had already been created in the Northwest Territory by the Ordinance of 1787 (1 Stats. at Large, p. 51), but this court was clearly not within the terms of Section 33 of the Judiciary Act.

It has been held by this Court that the territorial courts created by Congress under its authority to make all needful rules and regulations respecting the territories or other property of the United States, Article IV. Section 3, Clause 2, are not courts of the United States. These are designated as legislative courts.

In *McAllister* v. *United States*, 141 U. S., 174, it was held that the District Court of Alaska was not one of the "courts of the United States." President Cleveland had suspended the plaintiff from his office as judge of that Court under Section 1768, R. S., which then provided that the President might suspend any civil officer except "judges of the courts of the United States." The plaintiff sued to recover salary for his unexpired term. Alaska was by statute constituted a civil and judicial district. Upon the District Court for the District of Alaska there had been conferred the jurisdiction of the District and Circuit Courts of the United States. Certain appellate jurisdiction was given to the United States Circuit Court in Oregon. It was held, however, that the words "courts

of the United States" in the statute there under consideration were used with reference to the constitutional courts of the United States, those courts in which the judicial power of the United States is vested under Article III, Section 1. The Court in the *McAllister* case quoted from the numerous earlier decisions upon this question and emphasized the distinctions between constitutional and legislative courts drawn in the earlier cases, namely, that the jurisdiction of the territorial courts is not part of the judicial power conferred by the Constitution, but is a jurisdiction created under the plenary legislative power which Congress possesses for the territories, and that the tenure of judges of these courts need not be during good behavior.

The *McAllister* case was followed in *Wingard* v. *United States*, 141 U. S., 201, where the question was whether a judge of the Supreme Court of Washington Territory was a judge of a court of the United States.

In *Steamer Coquitlam* v. *United States*, 163 U. S., 346, the question presented was whether an appeal lay from the District Court of Alaska to the Circuit Court of Appeals. It was held that the provision of Chapter 517 of the laws of 1891 as to appeals from "existing Circuit and District Courts" applied only to the constitutional courts, so-called; that the Alaska District Court was not one of the constitutional courts, and that the Circuit Court of Appeals of the United States had not jurisdiction of appeals therefrom under Section 6 of the Act of 1891, but only under Section 15, giving it jurisdiction of appeals from the Supreme Court of the territory.

In *Thiede* v. *Utah*, 159 U. S., 510, it was held that Section 1033 R. S., requiring that a copy of the indictment be delivered to defendant in certain criminal cases, did not apply to territorial courts.

See also *United States* v. *McMillan*, 165 U. S., 510; *Corbus* v. *Leonhardt*, 114 Fed., 12; *Jackson* v. *United States*, 102 Fed., 473, 479.

If, as is now well established, territorial courts created under the power of Congress to legislate for the territories of the United States are not courts of the United

States, it is impossible to conceive that the courts created for the District of Columbia by Congress under its power to legislate for the seat of government, Article I, Section 8, Clause 17, are courts of the United States. The courts created for the District of Columbia are created under a legislative power in effect identical with that under which territorial courts are constituted. They are not constitutional courts. Their jurisdiction is no part of the judicial power of the United States conferred in Article III, Section 1. The fact that the judges of the District of Columbia are appointed to hold office during good behavior does not alter the situation; *McAllister v. United States*, 141 U. S., at pp. 185, 186. The granting of that tenure was not compulsory upon Congress, and this fact is conclusive, that the courts of the District of Columbia are not constitutional courts.

The extent of the judicial power of the United States is prescribed in the Constitution, Article III, Section 2. The Supreme Court of the District of Columbia possesses jurisdiction which is not within the prescribed judicial power of the United States; for example, probate jurisdiction.

This question has been recently decided by the Court of Appeals of the District of Columbia in *Moss* v. *United States*, 23 App. Cas., 475. That was an appeal from a sentence of contempt imposed by the Supreme Court of the District of Columbia. It was claimed by the appellant that the sentence was imposed under Section 725, R. S., and was imposed erroneously under that section. It was contended *by the Government* that the Supreme Court of the District of Columbia is not a Court of the United States within the meaning of Section 725 R. S. It was held by the Court of Appeals that the Supreme Court of the District of Columbia is a Court of the United States upon the reasoning that that Court, equally with the Federal Circuit and District Courts, is created under constitutional authority. No reference whatever is made

to the distinctions repeatedly drawn by this Court between constitutional courts and legislative courts. The Court in that case asserted that it had been declared by this Court that the Supreme Court of the District of Columbia is a Court of the United States, and cites *Embry* v. *Palmer*, 107 U. S., 3; *Phillips* v. *Negley*, 117 U. S., 665; *Thompson* v. *Selden*, 20 How., 194; and *Garland* v. *Davis*, 4 How., 131. We do not read the cases cited as authority sustaining the conclusion of the Court of Appeals.

Embry v. *Palmer*, *supra*, involved a question whether a judgment obtained in the Supreme Court of the District of Columbia was entitled to full faith and credit in the courts of the State of Connecticut. Mr. Justice Matthews referred, on pages 9 and 10 of his opinion, to the Supreme Court of the District of Columbia as a court of the United States. The distinction between constitutional and legislative courts was not, however, involved in that case. The only question was the question whether a judgment of that Court was within Section 905, R. S., which provided that the records and judicial proceedings not only of the courts of any State, but also of any territory or of any country subject to the jurisdiction of the United States shall have such faith and credit in every court within the United States as they have by law or usage in the Courts of the State from which they are taken. It was, of course, held that the Supreme Court of the District of Columbia was the court of a country subject to the jurisdiction of the United States.

Phillips v. *Negley*, *supra*, involved the question whether the Supreme Court of the District of Columbia had the power to set aside a judgment rendered at a previous term of that Court, and it was held that this power did not exist in any of the courts of the United States and that that power was not conferred by the statute of the State of Maryland. No construction of the term courts of the United States was involved, and the

distinction between constitutional and legislative courts was not presented.

Thomson v. *Selden*, *supra*, involved the question of the production of books and papers in the course of a trial in the Circuit Court for the District of Columbia. Section 15 of the Judiciary Act authorized the court upon motion and due notice to require a party to produce books or writings in his possession and to order a non-suit upon failure of the party to comply therewith. The only point decided in this case was that the record did not show that any motion had been made to compel the plaintiff to produce the books and papers and that, therefore, the court was not authorized to enter a judgment of nonsuit. No reference to the Circuit Court of the District of Columbia as a court of the United States is made.

Garland v. *Davis*, *supra*, involved questions of pleading in the Circuit Court of the District of Columbia. The Court referred to the thirty-second section of the Judiciary Act, which empowers any court of the United States to permit either of the parties to amend any defect in the process or pleadings, but this Court did not apparently base its decision upon the said thirty-second section, but, on the authority of English cases, and in accordance with the practice of this tribunal in common law cases, declined to allow an amendment or repleader, but reversed the judgment and remanded the case for further proceedings in the court below. No question was presented in that case as to whether the Circuit Court of the District of Columbia was a court of the United States.

The Court of Appeals of the District of Columbia in the *Moss* case also referred to *Page* v. *Burnstine*, 102 U. S., 664, as a decision by this court that the Supreme Court of the District of Columbia is a court of the United States. On the contrary, this court, in *Page* v. *Burnstine*, expressly refused to decide this point, as is shown by the opinion in the case, and as was subsequently declared in the *McAllister* case. *supra*.

Section 61 of the Code of the District of Columbia, enacted March 3, 1901, provides, in reference to the Supreme Court of the District of Columbia, that, "The said Court "shall possess the same powers and exercise the same "jurisdiction as the Circuit and District courts of the "United States, and shall be deemed a Court of the "United States, and shall also have and exercise all the "jurisdiction possessed and exercised by the Supreme Court "of the District of Columbia at the date of the passage of "this Code."

This declaration that the Supreme Court of the District of Columbia shall be deemed a Court of the United States cannot make that Court one of the courts belonging to the judicial system of the United States created under the authority of the Constitution, which courts alone are within the scope of Section 1014, R. S. The Government's contention in the *Moss* case, *supra*, was that it is not within the power of Congress to make courts of the United States out of courts created by it under the authority given by clauses of the Constitution other than the third article, and that therefore the declaration of Congress that the Supreme Court of the District of Columbia shall be deemed a court of the United States is without significance.

In reference to Section 61 of the District Code, the Court of Appeals in the *Moss* case said that that section was only a declaration of pre-existing judicial decisions.

That the question under consideration has not been definitely and finally decided by this Court is indicated in the opinion in *Cross* v. *U. S.*, 145 U. S., 577, in which case this Court declined to decide the point.

We submit that the decision of the Court of Appeals in *Moss* v. *United States*, *supra*, is unsound, and that the Supreme Court of the District of Columbia, by analogy to the territorial courts and on sound reasoning, is not a court of the United States within the meaning of Section 1014, R. S.

Judge LACOMBE in this case below rested his decision in overruling the present contention upon the argument that "It is to be expected "that, even if the language of the original "section were not sufficient to include the District of "Columbia, Congress has provided in some way against "the extraordinary result of its legislation whereby an "individual who might commit murder upon the steps of "the Capitol could live in undisturbed security provided "he succeeded in getting beyond the limits of the District "of Columbia before he was arrested." Such an argument, we submit, is unsound and does not furnish even a plausible reason for a construction of a statute contrary to its plain meaning and contrary to the intention of Congress. If Congress has enacted no law providing for the apprehension of persons who commit a crime within the District of Columbia and escape thence, the omission should be supplied by Congress and not by the courts. Legislation can be enacted for that purpose which would leave no room for doubt as to its intention.

By the Act of February 9, 1903, Chapter 529 (Compiled Statutes, Supplement, page 99), the provisions of Section 1014 were made applicable to the removal of prisoners from any part of the United States to the Phillipine Islands, and to the removal of offenders from the Phillipine Islands to the United States. The explicit terms used by Congress in this act to effect this purpose are in marked contrast to the obscure and general language of the Act of February 21, 1871, which is claimed to have made this removal statute applicable to the District of Columbia.

POINT SIXTH.

The appellant is in any event entitled under the provisions of the Constitution to a trial in the State of California.

Each count in the indictment alleges that payments were made at Washington, in the District of Columbia. The evidence shows that the payments upon which the first six counts are based are three payments in or about March, 1903. The first three counts declare upon payments to Harlan, as chief of the Special Service Division of the Land Office, made respectively on March 15, March 20 and March 25. The fourth, fifth and sixth counts declare upon payments made on the same dates to Harlan, as a clerk in the Land Office. The testimony of Harlan shows that the three payments upon which these six counts are based were received by him in the District of Columbia by mail from San Francisco, California (Record, p. 99). There is no pretense on the part of the Government that the first six counts are based upon any other remittances than those to which Harlan testified, as above stated. The Government is foreclosed by this testimony of its own witness. It cannot, in the nature of the case, be claimed that there might have been other evidence than the testimony of Harlan before the Grand Jury to support this indictment. Harlan's testimony shows that these three remittances were the only remittances which he received upon which the first six counts can be based.

The question is, therefore, presented whether the appellant can be tried in the District of Columbia for a crime predicated upon the mailing of money in San Francisco to a person in the District of Columbia. The formal laying of a venue in the City of Washington cannot control the evidence of the Government's own witnesses.

The Constitution, Article III, Section 2, provides: "The

"trial of all crimes except in cases of impeachment shall "be by jury; and such trials shall be held in the State "where the said crime shall have been committed, but "when not committed within any State the trial shall be "at such place or places as the Congress may by law have "directed."

Amendment 6 to the Constitution provides that "In "all criminal prosecutions the accused shall enjoy the "right to a speedy and public trial by an impartial jury "of the State and District wherein the crime shall have "been committed."

If any crime was committed by the appellant in the present case, it was a complete crime in the State of California, and appellant is entitled, under the constitutional provisions above quoted, to a trial in that jurisdiction, and that jurisdiction alone.

In *United States* v. *Worrall*, 2 Dallas, 384, 388, the defendant was indicted for attempted bribery. The bribe was offered by a letter mailed in Philadelphia and received in New Jersey. The Circuit Court in the Pennsylvania district held that the crime was consummated in Philadelphia by the writing and mailing of the letter there, and that it consequently had jurisdiction.

In *United States* v. *Plympton*, 4 Cranch. (Circuit Court) 309, it was held that the mailing of a letter in Baltimore containing a forged check addressed to a person in Washington was an uttering of the forged paper in Baltimore and not in the District of Columbia, citing *United States* v. *Wright*, 2 Cranch. (Circuit Court) 296.

In *United States* v. *Bickford*, 4 Blatchf., 337, 339, it was held that the transmission of a fraudulent application for a pension by mail from Vermont to Washington was a crime committed in the District of Vermont, where the application was mailed.

In *United States* v. *Fowkes*, 53 Fed. Rep., 13, the defendant was arrested in Pennsylvania for removal to Missouri on an indictment charging him with giving discrimi-

nating rates to a shipper in violation of the interstate commerce act. It appeared that the only act done by the defendant was the signing of a line voucher in Pennsylvania. It was held that the crime was completed in Pennsylvania and not triable in Missouri, although the line voucher so signed by the defendant effected its purpose in Missouri.

In *Landa* v. *State* 26 Texas, App., 580, it was held that where a letter sent to one threatening to accuse him of a crime is mailed in B County, the offense is committed there and not triable in C County under a Code provision that offenses shall be prosecuted in the county where committed.

In *Commonwealth* v. *Dorrance*, 14 Phila., 671, the defendant, who lived in Pennsylvania near the New York line, delivered a sealed letter the contents of which were libelous to a messenger in Pennsylvania to be delivered in New York. It was held that the defendant could be indicted therefor in Pennsylvania.

These cases establish the proposition that if the acts of the defendant constituted the crime of bribery, the crime was complete and indictable in the State of California. It follows from that proposition that the appellant has a Constitutional right to a trial in the State of California. The crime consists of the act and the criminal intent. The criminal intent cannot be separated from the physical presence of the defendant. The intent, if any, had its existence only in the State of California. The only actual physical acts of the defendant were done in California. Even if the crime could be considered as having been constructively committed in the District of Columbia, where the letters were received, that locality not being a State, or a federal judicial district, this constructive act cannot deprive the defendant of his constitutional right to a trial in the State where the crime, if any, was committed.

In *In re Palliser*, 136 U. S., 257, the defendant was arrested in the Southern District of New York for alleged bribery of a postmaster in the District of Connecticut. The indictment alleged the offering of the bribe in Connecticut, but the evidence showed that the offer was by a letter mailed in New York. The petitioner claimed the constitutional right to a trial in New York. This Court held that if any offense was committed in New York by mailing the letter, it continued to be committed when the letter reached the postmaster in Connecticut, and that if no offense was committed in New York, the offense was committed in Connecticut; in either of which cases the Court in the District of Connecticut would have jurisdiction, and that it was unnecessary to decide whether the offense was complete in New York. This case is not, therefore, authority against the contention that the alleged crime in the present case was complete and indictable in California upon the mailing of the money. The Court plainly rested its decision in the *Palliser* case upon Section 731, U. S. R. S., which provides that when an offense is begun in one judicial circuit and completed in another, it shall be deemed to have been committed in either and may be tried in either district. The Court apparently held that the crime was continuous until the receipt of the letter in Connecticut, and that therefore, under Section 731, the offense was indictable and triable in the State of Connecticut. This Court certainly did not hold that the act of mailing the letter in New York was not a crime, nor did it hold that a crime was triable in Connecticut upon any other theory than that it was a continuous crime begun in one jurisdiction and completed in another.

But while Section 731 U. S., R. S., may have been applicable in the *Palliser* case, where the letter was both mailed and received in a judicial district of the United States, that section has no application to the present case since the letter here was mailed in the State and District

of California and received in the District of Columbia, which is not a judicial district within the meaning of that section.

It was held by Judge Cox in *United States v. Guiteau*, 1 Mackey, 564, that Section 731 has no application to a crime begun in the District of Columbia and completed in a state, and quotations from his opinion upon this point are made in the preceding point of this brief.

This removal to the Supreme Court of the District of Columbia for trial cannot therefore be sustained upon the theory that the offense here charged was a continuous crime begun in California and completed in the District of Columbia, for, to such a case Section 731 has no application. If the record shows a crime complete and indictable in California, the constitutional right to a trial in that State and District is absolute, and no trial therefor can be held in the District of Columbia upon the theory of a continuing crime or upon the theory that the crime was constructively committed in that jurisdiction, as well as in the State of California.

The recent decision of this Court in *Burton* v. *United States*, decided January 16, 1905, has no application to the point under consideration. The appellant in that case was charged with the crime of receiving a consideration for services rendered in violation of the statute. The gist of the offense was the receipt of the money, and it was held that the money was received in the District of Columbia, where the appellant received credit for the checks which had been sent him from Missouri. In the present case, the gist of the offense is the offering of money by the appellant with criminal intent.

The Government cannot deny this constitutional privilege of a trial in the State of California, except by insisting that the constitutional provision be construed as limiting the right to trial in a state to crimes which are committed wholly in the state and not embracing crimes which are constructively committed in some other jurisdiction

also; but if such construction be advanced, the same rule of construction would be equally applicable to the statute which is the sole authority for the jurisdiction of the Supreme Court in the District of Columbia and would defeat the jurisdiction of that Court. Section 83 of the Code of the District of Columbia of 1902, under which this indictment is found in the Supreme Court of the district, provides as follows: "The trial of crimes and mis-"demeanors committed in the District of Columbia shall "be in the Supreme Court of the District of Columbia "holding a special term as a criminal court."

If the constitutional clause in question is construed as limited to crimes wholly committed in the State, this Code section must, by the same rule of construction, be held to limit the jurisdiction of the Supreme Court of the District of Columbia to crimes wholly committed in the District of Columbia and not committed elsewhere, actually, constructively or partially. And if the jurisdiction of that Court is so limited, it has no jurisdiction of the charges contained in the first six counts of the indictment, and the defendant cannot be removed to the District of Columbia for trial.

The point here presented is not an unimportant or frivolous contention. A trial in the District of Columbia or in a territory of the United States does not afford the protection to a defendant which is afforded by a trial in the Federal Courts within the States. It is a serious matter to require a defendant to stand trial at a place several thousand miles from his home, among strangers, in a locality dominated by the Government, and whither he can bring witnesses only at enormous expense.

This contention was dismissed by the Court below without consideration, with the statement that it is unnecessary to discuss this question here since, concededly, the offenses charged in the seventh and eighth counts were committed in Washington. While it is true that

the present contention refers only to the charges contained in the first six counts of the indictment, if this contention be sustained, there can be no removal of the appellant to the District of Columbia. The uncontradicted and indisputable evidence of the Government's own witnesses proves conclusively that there is no probable cause to believe the appellant guilty of the offenses charged in the seventh and eighth counts of the indictment.

The seventh count charges a payment to Harlan on December 18, 1903. Harlan testified that when he saw the appellant at this time he spoke to him with reference to obtaining the notes of the investigation from the stenographer (Record, p. 102); that on December 18, the witness stated to appellant at the instance of special agent Burns the names of certain people purporting to be the names of persons who had testified during the investigation (Record, pp. 103, 104); that thereafter appellant gave witness $200; that appellant refused to pay $1,000 or $500 for the stenographer's notes and had said that he didn't see why he should pay out money for others (Record, p. 133); that witness had not the stenographer's notes in his possession, had no intention of furnishing the stenographer's notes to the appellant, and presumed that he could not have obtained the stenographer's notes unless he had stolen them, and that he was not in a position to obtain them at all in the ordinary course of his duty (Record, p. 132). Harlan testified also that when he spoke to appelant in relation to the stenographer's report appellant replied that he did not want it (Record, p. 132).

This testimony shows conclusively that the alleged December payment was not made by appellant to the witness for the purpose of obtaining the report of the special agent. It shows that the transaction at this time upon which the seventh count is based related in no

respect to a publication by Harlan of the contents of the special agent's report which he should have obtained in the course of his duties or by reason of his employment as a clerk in the Land Office, but related entirely to the stenographer's notes of the investigation, which is a very different thing, and that the transaction consisted entirely of an offer by Harlan to procure the notes of the investigation and that that offer was refused by the appellant. And in addition, it is worthy of note that Harlan's entire transactions with the appellant in December were instigated by the Government officials, and his dealings with the appellant were throughout for the purpose of entrapping the appellant into the commission of some criminal offense (Record, pp. 122, 126, 127, 129–132, 134, 151–153).

The eighth count charges a payment to Valk on December 16, 1903. Valk testified that on December 16 he saw the appellant at a hotel in Washington, and talked with him about the investigation; that he told appellant that appellant's name had been mentioned in the course of the investigation, and that the witness had been asked about him (Record, pp. 170, 187); that after this conversation he received $100 from appellant (Record, p. 171). There is no pretence of any testimony that the appellant requested Valk to obtain any information for him concerning the investigations or that Valk offered to perform such a service. The payment of money to Valk at this time is explained by the previous relations existing between appellant and the witness. Valk testified at length to services rendered for the appellant during previous years in expediting the appellant's applications pending in the Land Office. These transactions were perfectly innocent transactions, entirely unconnected with the charges made in the present case, and the evidence thereof was introduced by the United States attorney for the purpose of showing the prior

relations existing between the appellant and the witnesses and it has never been suggested by the Government that it is useful for any other purpose. It appears that Valk had on one or two occasions prior to this time written the appellant requesting money as a loan to make good losses in stock speculations (Record, pp. 183, 185, 188). Valk testified also that at this time appellant still owed him for services rendered prior to September, 1902, over $400, according to his calculations (Record, pp. 184, 185).

The whole transaction between the appellant and Valk in December, is thus shown by the testimony of Valk himself to have consisted in the appellant's inquiry as to what witness knew concerning the investigation and the reply of the witness that the appellant's name had been mentioned in that connection. This certainly furnishes no foundation for a finding of probable cause to believe that the appeliant paid money to Valk on December 16 with intent to induce him to reveal the contents of the report of the special agents.

The testimony of the Government's own witnesses, therefore, destroys the *prima facie* case of probable cause as to the charges made in the seventh and eighth counts of the indictment, which the indictment itself would have furnished if unsupported by evidence. Upon the whole record, considering the indictment and the evidence together, the Government has not only failed to show probable cause in relation to counts seven and eight, but the government has made it affirmatively appear that the payments alleged in these counts were not made for the purposes declared in the indictment.

If, therefore, the contention that the appellant is entitled under the Constitution to a trial in the State of California on the first six counts of the indictment is sustained, there can be no removal to the District of Columbia, since the Government has disproved the allegations in the remaining counts of the indictment.

The order of the Circuit Court dismissing the writ of habeas corpus should be reversed and that Court directed to discharge appellant.

FRANK H. PLATT,
of Counsel.

February, 1905.

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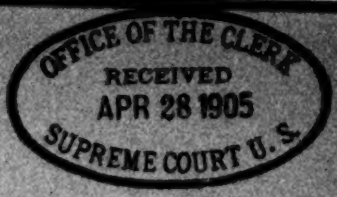

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 308.

JOHN A. BENSON, APPELLANT,

vs.

WILLIAM HENKEL, U. S. MARSHAL.

PETITION FOR REHEARING.

J. C. CAMPBELL,
Attorney for Appellant and Petitioner.

HENRY B. O'REILLY,
Of Counsel.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 15762

(19,408.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 308.

JOHN A. BENSON, APPELLANT,

vs.

WILLIAM HENKEL, U. S. MARSHAL.

PETITION FOR REHEARING.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Compelled by the exigencies of the order herein to consider the decision upon telegraphic summary thereof and to submit our application for rehearing by wire, we still assure the court that, should it await printed brief, reconsideration would cordially be acceded because of the transcendent importance of the constitutional rights and questions involved as sharply presented by the declarations of the court.

Rehearing is earnestly urged, for that it is humbly suggested the court erred in its conclusions—

I. That the District of Columbia is one of the judicial districts of the nation, carved out of the Maryland district.

II. That the supreme court of the District of Columbia may exercise the same powers and jurisdiction as the courts of the United States.

III. That Congress could provide that any general law of the nation could be abrogated or repealed or its operation suspended within the District of Columbia, if inconsistent with the code thereof.

IV. That it was lawful to create in said District a court with power to exercise an amalgamated jurisdiction, local and national, and to prosecute therein offenders against the laws of the nation, and under a procedure original and appellate, essentially different from that prevailing in the courts of the nation.

Petitioner is prepared to demonstrate, as he believes, from the Constitution and law of the land embracing the decisions of this court—

A. That full remedy and punishment in every possible emergency has been provided for all crimes, local or national, committed within the District of Columbia, and for the effective extradition of all fugitives from the justice thereof.

B. That for any crime against the nation committed within the United States, as well within the District of Columbia as elsewhere, the offender must be indicted and tried in the State and national judicial district within which the crime was committed, and in a national tribunal vested with exclusive jurisdiction thereof.

C. That the national judicial district of Maryland has ever embraced that entire State, including the District of Columbia, and was again so reiterated and declared in nineteen hundred and one.

That Congress has never attempted to change in any manner the territorial jurisdiction thereof.

That it was constitutionally impossible for Congress to create the District of Columbia a national judicial dis-

trict while it embraced portions of the States of Virginia and Maryland.

D. That the District of Columbia is as much an integral part of the State of Maryland and of that national judicial district as Fort McHenry or Baltimore, and that all crimes against the United States committed within that judicial district can only be prosecuted in the Federal courts thereof.

That thus, and thus only, is it possible to comply with the imperative mandates and requirements of the Constitution.

E. That Maryland never did or could cede to the United States any part of its territory; that the only cession possible under the Constitution was of mere legislative power over a certain area selected for the uses and purposes of the seat of government.

F. That such legislative powers are purely local and municipal and might well have been vested in commissioners selected by the President or the governor of Maryland, had the Constitution so provided.

G. The laws of the District of Columbia can have no greater force than like legislation over military, naval, or administrative reservations of the Government. And yet the most exclusive and absolute control and jurisdiction thereof vested in the Government does not supersede the laws of the State unless inconsistent with the uses and purposes of the Government.

H. That petitioner cannot be deprived, under the dome of the Capitol, of rights, privileges, and immunities guaranteed every freeman everywhere else under the palladium of the Constitution and law of the land.

Fully satisfied of the desire of the court that full justice be done the humblest suitor, petitioner rests confident in the

hope that his counsel may be afforded an opportunity for supporting these contentions with argument and authority.

J. C. CAMPBELL,
Attorney for Petitioner.
HENRY B. O'REILLY,
Of Counsel.

CERTIFICATE OF COUNSEL.

We, the undersigned, attorney and counsel for said John A. Benson, appellant and petitioner herein, do hereby certify that in our opinion there is just ground in point of law for the allowance of a rehearing in said cause.

J. C. CAMPBELL,
Attorney for Petitioner.

HENRY B. O'REILLY,
Of Counsel.

In the Supreme Court of the United States

OCTOBER TERM, 1904.

JOHN A. BENSON, APPELLANT,
v.
WILLIAM HENKEL, UNITED STATES MARSHAL for the southern district of New York. } No. 308.

MOTION TO ADVANCE.

The appellant, Benson, was arrested upon a warrant issued by a United States commissioner, and after a hearing before that officer was committed to await the action of the district judge, upon an application to be made by the United States attorney for a warrant of removal to the District of Columbia for trial upon an indictment found by a grand jury of the Supreme Court of the District. The charge is for several separate violations of the provision of section 5451 of the Revised Statutes, which punishes with fine and imprisonment any person who promises, offers, or gives any money or thing of value to any officer of the United States with intent to induce him to do, or omit to do, any act in violation of his lawful duty.

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The appellant sued out a writ of *habeas corpus*, and, after a hearing before Judge Lacombe, the writ was dismissed and the defendant remanded to await the action of the district judge. This appeal was then taken.

The appellant has been admitted to bail in the sum of $10,000, pending the decision of this court on his appeal.

As the *habeas corpus* proceeding was instituted for the purpose of preventing entirely or delaying the removal of the petitioner to the District of Columbia to stand trial on the indictment there pending against him, the Solicitor-General, in order to a prompt execution of the criminal laws, moves the court to advance the case on the docket and set it down for a hearing on such day as may be convenient to the court.

Notice of this motion has been served on opposing counsel and proof of such notice filed with clerk.

HENRY M. HOYT,
Solicitor-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1904.

JOHN A. BENSON, APPELLANT,
v.
WILLIAM HENKEL, UNITED STATES marshal for the southern district of New York. } No. 308.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHEN DISTRICT OF NEW YORK.

BRIEF ON BEHALF OF APPELLEE.

December 31, 1903, John A. Benson was indicted by a grand jury in the supreme court of the District of Columbia for violation of certain of the provisions of section 5451 of the Revised Statutes. Said section is as follows:

> Every person who promises, offers, or gives, or causes or procures to be promised, offered, or given, any money or other thing of value, or makes or tenders any contract, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, to any officer of the United States, or to any person acting for or on behalf of the United States in any official function, under or by authority of any department or

office of the Government thereof, or to any officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or both Houses thereof, with intent to influence his decision or action on any question, matter, cause, or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, or in his place of trust or profit, or with intent to influence him to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the United States, or to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed in the preceding section.

In the first three counts of the indictment it is alleged, in substance, that the defendant during the period specified was engaged with one Frederick A. Hyde, at San Francisco, California, in the business of unlawfully obtaining from the United States, and appropriating to their own use, profit, gain and benefit the public lands of the United States outside of forest reserves, in exchange for school lands of the States of California and Oregon within forest reserves, obtained from said States by defendant and said Hyde in a manner, as it was charged, contrary to the laws of said States, and by means of a false and fraudulent practice the details of which are set forth in the indictment; that an investigation by special agents of the land department, of the unlawful transactions so charged, was ordered by the Secretary of the Interior; that such investigation

was begun and carried on by said special agents, who were to report to the Secretary of the Interior, and whose reports would be for the exclusive consideration and use of the proper officers of the Department of the Interior and of the General Land Office, and would be the official and secret reports of said special agents, the contents whereof should not be revealed to any unofficial person; that during the said period Woodford D. Harlan was a person acting for the United States in an official function, under the Department of the Interior, that is to say, as chief of the special service division of the General Land Office, whose duty it was to consider and act upon all reports of special agents pertaining to alleged violations of the laws relating to the disposal of the public lands, and to preserve and keep for the exclusive consideration and use of the proper officers of the land department, all information and official reports coming to him by virtue of his official position; and that during the said period, the defendant unlawfully gave to Harlan, in the District of Columbia, certain sums of money with intent to induce him to do an act in violation of his lawful duty, that is to say, to reveal to defendant the contents of the reports of said special agents, pertaining to said investigation.

The fourth, fifth and sixth counts of the indictment are based upon the same payments of money by defendant to Harlan, mentioned in the first, second and third counts, and upon the same facts and circum-

stances set forth in those counts, except that Harlan's official position and duties are somewhat differently designated and described.

The seventh count is based upon a different payment of money by defendant to Harlan, in the District of Columbia, with like intent to induce him to reveal to defendant the contents of the reports of said special agents pertaining to said investigation, in violation of his lawful duty.

The eighth count is based upon the payment of money by defendant, in the District of Columbia, to one William E. Valk, an officer of the United States, under the Department of the Interior, whose official position and duties are fully set forth and described, with intent to induce said Valk to reveal to defendant the contents of the reports of said special agents pertaining to said investigation, in violation of his lawful duty.

The defendant was arrested in the southern district of the State of New York upon a warrant issued by a United States commissioner on the sworn complaint of an officer of the United States, with a copy of the indictment attached to and made a part of the complaint, and proceedings were had under section 1014 of the Revised Statutes for his removal to the District of Columbia for trial. The defendant's identity being admitted (p. 36 of the record), the Government introduced a duly certified copy of the indictment attached to the complaint, and other evidence was also introduced (record, pp. 32–200). One witness was examined on behalf of defendant (record, p. 200), but no

evidence was offered to controvert in any manner the allegations of the indictment.

May 4, 1904, the commissioner committed the defendant to the custody of the United States marshal until a warrant for his removal should be issued by the district judge (record, p. 33). He thereupon filed his petition in the circuit court for the southern district of New York asking that writs of *habeas corpus* and *certiorari* be granted him, on the alleged grounds that his arrest, commitment, detention and restraint were illegal and without due process of law, and were contrary to and in violation of the Constitution (record, pp. 1–2). The writs were accordingly granted, but upon returns thereto by the marshal and the commissioner, the circuit court, on May 31, 1904, dismissed the writ of *habeas corpus*, and remanded the defendant to the custody of the marshal to await the action of the district judge (record, pp. 204–207, 130 Fed. Rep., 486).

The defendant thereupon filed his petition of appeal to this court, which was allowed (record, pp. 209–210).

Stripped of unnecessary verbiage, the contentions presented in the assignments of error are, in effect, that the circuit court erred in holding that the question of the sufficiency of the indictment is not a matter of inquiry in removal proceedings, but is to be determined by the court in which it was found; in not holding the indictment insufficient because not charging an offense against the United States; in not hold-

ing that there is no evidence of probable cause sufficient to warrant the commitment of the defendant; in not holding that the offenses alleged in the indictment are shown by the evidence to have been committed in the State of California, and that under section 2, Article III, of the Constitution, and Article VI of the amendments, the defendant is entitled to be tried in that State; and in not holding that there is no authority under section 1014 of the Revised Statutes to remove defendant to the District of Columbia.

These contentions are merely colorable and are wholly untenable. That technical objections to an indictment are to be determined by the court in which it was found, and are not matters of inquiry in removal proceedings, is settled law (*Greene* v. *Henkel*, 183 U. S., 249, 261, 262; *Beavers* v. *Henkel*, 194 U. S., 73, 87). In *Greene* v. *Henkel* it was held that the granting of an order of removal, under section 1014, is not to be regarded as adjudging the sufficiency of the indictment in law as against any objections which the defendant may make, and that the place to set up the invalidity of the indictment is the court in which it was found. In *Beavers* v. *Henkel* it was said:

> * * * so far as respects technical objections, the sufficiency of the indictment is to be determined by the court in which it was found and is not a matter of inquiry in removal proceedings.

It is also settled that the writ of *habeas corpus* can not be used as a writ of error to review the action of a commissioner or other officer under section 1014, either

upon questions of evidence, or upon questions of law relating to the sufficiency of the indictment. In *Greene* v. *Henkel*, *supra* (p. 261), it was held that jurisdiction upon the writ of *habeas corpus* in removal proceedings does not extend to an examination of the evidence upon the merits; and in *Horner* v. *United States* (143 U. S., 570, 577, 578), where the question was whether the scheme described in a certain circular was a lottery, and whether the depositing by Horner of such circular in the mail was an offense within the meaning of section 3894 of the Revised Statutes, as amended by the act of September, 19, 1890 (26 Stat., 465), this court said:

> But we are of opinion that that question ought not to be reviewed by us on this appeal. The point raised is that the Austrian bond scheme was not a lottery. That is a question properly triable by the court in which an indictment may be found against Horner. * * * It is not proper for this court, on this appeal, nor was it proper for the circuit court, on the writ of *habeas corpus*, to determine the question whether the scheme was a lottery. * * * It is not for this court to determine that question in advance.

In *Ex parte Rickelt* (61 Fed. Rep., 203) the question was whether the facts developed before the commissioner were sufficient to constitute the offense with which the prisoner was charged. The circuit court said:

> That is a mere question of law, the decision of which is in the first instance committed by section 1014, Revised Statutes, to the jurisdic-

> tion of the United States commissioner before whom the preliminary examination is had. * * * The writ of *habeas corpus* can not be used as a writ of error to review the action of the United States commissioner within his jurisdiction.

See also *Ex parte Parks* (93 U. S., 18, 23); *Ex parte Yarbrough* (110 U. S., 651, 653); and *Stevens* v. *Fuller* (136 U. S., 468, 477).

In *Beavers* v. *Henkel*, *supra* (p. 85), it was held:

> Within the spirit of the rule of giving full effect to the records and judicial proceedings of other courts, an indictment, found by the proper grand jury, should be accepted everywhere through the United States as at least *prima facie* evidence of the existence of probable cause.

Prior to that decision the Government introduced certain evidence before the commissioner in this case. The evidence does not contradict the indictment, as claimed by appellant, but clearly supports it.

It is contended that section 5451 contemplates the violation only of duties specifically required by law, and that the indictment is void because not averring that the duties of Harlan and Valk, which defendants sought to induce them to violate, were prescribed by statute. There is nothing in this contention. In *United States* v. *McDaniel* (7 Pet., 1, 14) this court, speaking of the duties of officers and employees acting under and by authority of a department of the Government, said:

> A practical knowledge of the action of any one of the great departments of the Govern-

> ment must convince every person that the head of a department, in the distribution of its duties and responsibilities, is often compelled to exercise his discretion. He is limited in the exercise of his powers by the law; but it does not follow that he must show a *statutory provision* for every thing he does. No government could be administered on such principles. To attempt to regulate by law the minute movements of every part of the complicated machinery of government would evince a most unpardonable ignorance on the subject. Whilst the great outlines of its movements may be marked out, and limitations imposed on the exercise of its powers, there are numberless things which must be done, that can neither be anticipated nor defined, and which are essential to the proper action of the Government. Hence, of necessity, usages have been established in every department of the Government, which have become a kind of common law, and regulate the rights and duties of those who act within their respective limits.

In the case of *Tyner et al* v. *United States* (Wash. Law Rep., vol. 32, 258) the court of appeals of the District of Columbia quoted from and followed the McDaniel case. It also said:

> Duties imposed by law or regulation promulgated thereunder, and not inconsistent therewith, require no proof. Additional duties that may have been imposed from time to time, by order or direction in the ordinary course of administration of the business of the department, must be proved like other facts. But the

> direct allegation of the fact in the indictment is all that is required; it is not necessary to set forth the evidence or to negative any theory of the defense. (*Stokes* v. *United States*, 157 U. S., 187, 191; *Evans* v. *United States*, 153 U. S., 584, 594.)

See also sections 441, 453, and 2478, Revised Statutes, and *Knight* v. *Land Association*, 142 U. S., 161, 177, 181–182; *Caha* v. *United States*, 152 U. S., 211, 221–222; *Cosmos Exploration Company* v. *Gray Eagle Oil Company*, 190 U. S., 301, 309.

There is nothing in the contention that under the Constitution the defendant is entitled to be tried in the State of California. The several briberies mentioned in the indictment are charged to have been committed in the District of Columbia. While as to each of the first six counts the evidence shows that the money paid by defendant was sent by mail from San Francisco, California (record, pp. 97–99), there can be no question that the payments were made in the District of Columbia, the place where the letters containing the money were received by the person to whom they were addressed. (Rev. Stat., sec. 731; *In re Palliser*, 136 U. S., 257, 262, and authorities cited.) As to the seventh and eighth counts, both the defendant and the person to whom the money was paid were actually in the District of Columbia at the time of payment (record, pp. 101–104, 170–171). Therefore, should the district judge grant an order of removal in this case, no constitutional rights of the defendant would be in anywise taken from him.

This disposes of all matters presented by the appeal, except the question of authority under section 1014 of the Revised Statutes, to remove defendant to the District of Columbia for trial. By said section provision is made that an offender may be arrested in any State where he may be found, and imprisoned or bailed, as the case may be, "for trial before such court of the United States as by law has cognizance of the offense;" and that when imprisoned (in default of bail) in a district other than the one in which the offense is to be tried he shall be, by order of the judge of such district, removed to the district where the trial is to be had.

It is contended that the District of Columbia is not a *judicial* district, and therefore not a "district" within the meaning of the statute under consideration. Manifestly, the important and controlling provision of the statute is that the offender shall be arrested and imprisoned, if not bailed, "for trial before such court as by law has cognizance of the offense." The later provision prescribes the means whereby the offender is to be removed to the jurisdiction where the trial is to be had. The term "district" is clearly used in the sense of denoting the jurisdiction or place of trial.

Congress has declared the supreme court of the District of Columbia to be "a court of the United States," and has directed that crimes committed in the District shall be tried in such court. (See sections 61 and 83 of the new code of the District of Columbia.) It is therefore clearly such court of the United States as by law has cognizance of the offense charged in this indictment, within the meaning of said section 1014.

Courts of general jurisdiction in the District of Columbia have always been regarded as courts of the United States, even prior to the enactment of the new code. See *Moss* v. *United States* (Wash. Law Rep., vol. 32, pp. 342–343); *Embry* v. *Palmer* (107 U. S., 3, 9–10); *Phillips* v. *Negley* (117 U. S., 665, 674–675).

By section 1, chapter 39, Compiled Statutes of the District of Columbia (1894, p. 337) it is provided that—

> The Constitution and all the laws of the United States, which are not locally inapplicable, shall have the same force and effect within the District as elsewhere within the United States.

By section 24, chapter 35, Compiled Statutes of the District of Columbia (p. 296, act of June 22, 1874, 18 Stats., 193), it is declared that—

> The provisions of the thirty-third section of the judiciary act of seventeen hundred and eighty-nine shall apply to courts created by act of Congress in the District of Columbia.

Among the provisions of the judiciary act here referred to are those contained in said section 1014 of the Revised Statutes.

By section 1 of the new code of the District of Columbia it is declared that—

> * * * all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of

this act shall remain in force except in so far as the same are inconsistent with, or are replaced by, some provision of this code.

Clearly this legislation makes section 1014 applicable to the District of Columbia as well as to other parts of the United States. It is a general law of the United States, not locally inapplicable in the District of Columbia, and was, by section 24, chapter 35, of the Compiled Statutes of the District, specially declared to apply to courts created by act of Congress in the District; and section 24 has not been "replaced" by any provision of the new code.

In *United States* v. *Haskins* (3 Sawy., 262; Fed. Cas., vol. 26, No. 15,322) the United States district court of California held that for a Federal offense committed in the Territory of Utah, the offender may be arrested in any district of the United States and removed to the Territory for trial if the Territorial courts have cognizance of the offense, and that the Territorial courts are "courts of the United States," as that designation is applied in section 33 of the judiciary act (section 1014 of the Revised Statutes).

In the case of *Burton* v. *United States* (not yet reported) it seems to have been taken for granted by this court that the term "district," used in Article VI of the amendments to the Constitution providing for trial of a person charged with crime by a jury of the State and district in which the crime was committed, and in section 731 of the Revised Statutes providing that offenses begun in one "judicial circuit" (meaning

judicial district, *Horner* v. *United States*, 142 U. S., 207, 212) and completed in another, may be tried and punished in either district, was intended to embrace the District of Columbia as well as other districts of the United States; or at least that in matters of venue in criminal cases the term "district" is applicable interchangeably to the District of Columbia and other districts of the United States.

The *Dana case* (68 Fed. Rep., 886), relied on by appellant, does not support his contention. The sole or real ground for the refusal of an order of removal in that case was that *libel*, the offense there charged, did not belong to the class of offenses contemplated by said section 1014. It was not held that the section is inapplicable to the District of Columbia as to offenses like the one here under consideration, created under the general legislation of Congress, as to which removals may be had as between the different Federal judicial districts of the country. Upon this question the court specifically declined to express an opinion (p. 904).

Moreover, it is a settled rule of statutory construction that all laws must be construed, if possible, to prevent absurd or mischievous results. (Maxwell on Interpretation of Statutes, p. 179; Sutherland on Statutory Construction, secs. 323, 324; *Lau Ow Bew* v. *United States*, 144 U. S., 47, 59.) The construction here contended for, if adopted, would be both absurd and mischievous. The result would be that all offenders against the laws of the United States, in the Dis-

trict of Columbia, could secure absolute immunity from punishment for their crimes, simply by departing and remaining without the bounds of the District. It would make the whole United States outside the District of Columbia an asylum for fugitives from the administration of justice within the District. This would be a sufficient reason for rejecting the construction, if there were no other.

It is submitted that the decision of the circuit court dismissing the writ of *habeas corpus* should be affirmed.

HENRY M. HOYT,
Solicitor-General.
FRANCIS J. HENEY,
Special Assistant to the Attorney-General.
ARTHUR B. PUGH,
Special Assistant United States Attorney.

O

Supreme Court of the United States.

No. 308.—October Term, 1904.

John A. Benson, Appellant, vs. William Henkel, United States Marshal. } Appeal from the Circuit Court of the United States for the Southern District of New York.

[April 17, 1905.]

This was an appeal from an order dismissing a writ of *habeas corpus*, and remanding appellant to the custody of the marshal to await the action of the District Judge.

On December 31, 1903, an indictment was found by the grand jury of the District of Columbia, charging appellant with a violation of R. S. Sec. 5451, in bribing an officer of the United States to do an act in violation of his official duty. Appellant was arrested in the Southern District of New York, upon a warrant issued by a United States Commissioner, which warrant was issued upon the complaint of a special agent of the Interior Department, to which a copy of the indictment was annexed. Appellant demanded an examination before the Commissioner, in the course of which witnesses were examined on behalf of the Government, and a certified copy of the indictment was admitted as evidence. No material testimony was offered on behalf of the defendant. The Commissioner found there was probable cause, and remanded defendant to the custody of the marshal to await a warrant for his removal. Immediately thereafter appellant applied for a writ of *habeas corpus* and *certiorari*. At the close of the hearing he was remanded to the custody of the marshal. (130 Fed. Rep. 486.)

Mr. Justice Brown delivered the opinion of the Court.

But three questions are raised by the arguments and briefs of counsel in this case:

1. That the indictment charges no crime against the United States.

2. That the District of Columbia is not a District of the United States within the meaning of R. S. Sec. 1014, authorizing the removal of accused persons from one district to another.

3. That the crime was committed in California, and is only triable there.

The indictment is founded upon R. S. Sec. 5451, which enacts that "every person who promises, offers or gives . . . any money or other thing of value . . . to any officer of the United States, or to any person acting for or on behalf of the United States in any official func-

tion, under or by authority of any Department or office of the Government thereof, . . . with intent to influence his decision or action on any question, matter, cause or proceeding which may at any time be pending, or which may by law be brought before him in his official capacity, . . . or with intent . . . to induce him to do or omit to do any act in violation of his lawful duty, shall be punished as prescribed," etc.

The first three counts of the indictment charge, in substance, that the defendant was engaged with one Hyde, at San Francisco, California, in the business of unlawfully obtaining the public lands of the United States; that an investigation by special agents of the Land Department of the unlawful transactions so charged was ordered by the Secretary of the Interior; and it became the duty of such agents to make reports to the Secretary, the contents of which should not be revealed to any unofficial person; that at this time a Department clerk was acting as chief of the special service division of the General Land Office, whose duty it was to act upon all reports of such special agents and to preserve and keep for the exclusive use of the Land Department all such reports; and that pending such investigation the defendant unlawfully gave to such officer, in the District of Columbia, certain sums of money, with the intent to induce him to do an act in violation of his lawful duty—that is to say, to reveal to defendant the contents of the reports of such special agents relating to said investigation. These counts are representative of all the others, one of which is based upon the payment of money to another officer of the United States, with like intent.

(1) Objection is made to the indictment upon the ground that at the time of payments to these officers the special agents' report had not come into their possession or knowledge, and there is no allegation to prove that it ever would; that they had no duty concerning it; that it was not shown that they ever would have such duty; and that a charge of bribery cannot be based upon payment to an officer to induce him to perform an act, as to which he has no duty, and may never have any duty. (2) That neither of these officers was forbidden by any lawful duty to reveal to Benson the contents of any report, even if they ever should come into a position to do so. Upon these grounds it is insisted that the indictment charges no offence against the United States under Section 5451.

1. The extent to which a Commissioner in extradition may inquire into the validity of an indictment put in evidence before him, as proof of probable cause of guilt, has never been definitely settled, although we have had frequent occasion to hold generally that technical objections should not be considered, and that the legal sufficiency of the indictment is only to be determined by the court in which it is found. (*Ex parte Reggel*, 114 U. S. 642, 650; *Roberts* v. *Reilly*, 116 U. S. 80, 96; *Horner* v. *United States*, 143 U. S. 570, 577; *Greene* v. *Henkel*, 183 U. S. 249, 260; *Beavers* v. *Henkel*, 194 U. S. 73, 87.)

Indeed, it is scarcely seemly for a committing magistrate to examine closely into the validity of an indictment found in a Federal Court of another District, and subject to be passed upon by such court on demurrer or otherwise. Of course, this rule has its limitations. If the indictment were a mere information, or obviously, upon inspection, set forth no crime against the United States, or a wholly different crime from that alleged as the basis for proceedings, or if such crime be charged to have been committed in another District from that to which the extradition is sought, the Commissioner could not properly consider it as ground for removal. In such cases resort must be had to other evidence of probable cause.

While the principle laid down in some of the earlier cases in this court, that an indictment upon a statute is ordinarily sufficient if framed in the language of the statutes has been somewhat qualified in later cases, the rule still holds good that where the statute contains every element of the offence, and an indictment is offered in evidence before the extradition Commissioner as proof of probable cause, it is sufficient if framed in the language of the statute with the ordinary averments of time and place, and with such a description of the fraud, if that be the basis of the indictment, as will apprise an intelligent man of the nature of the accusation, notwithstanding that such indictment may be open to motion to quash or motion in arrest of judgment in the court in which it was originally found. An extradition commissioner is not presumed to be acquainted with the niceties of criminal pleading. His functions are practically the same as those of an examining magistrate in an ordinary criminal case, and if the complaint upon which he acts or the indictment offered in support thereof contains the necessary elements of the offence, it is sufficient, although a more critical examination may show that the statute does not completely cover the case. (*Pearce* v. *Texas*, 155 U. S. 311; *Davis's Case*, 122 Mass. 324; *State* v. *O'Connor*, 38 Minn. 243; *In re Voorhees*, 32 N. J. Law, 141; *In re Greenough*, 31 Vt. 279, 288.)

Applying these considerations to the present case, it appears plainly from the indictment that the accused was charged with the crime of bribery in paying to two officers certain sums of money to reveal to the petitioner the contents of certain reports, pertaining to an investigation then pending with respect to certain frauds used in obtaining public lands. The Commissioner was not required to determine for himself whether the statute applied to reports which had not yet been filed, and which might never be filed, or whether the words of the statute, "which may at any time be pending, or which may by law be brought before him in his official capacity," apply to the pendency of the investigation, or to the pendency of an obligation not to reveal the contents of a paper then in his possession. This was peculiarly a subject for examination by the court in which the indictment was found.

Like comment may be made with respect to the second objection, that neither of these clerks was forbidden by any lawful authority to reveal the contents of such reports, upon the ground that there was no statute imposing such obligation. But it is clearly for the court to say whether every duty to be performed by an official must be designated by statute, or whether it may not be within the power of the head of a Department to prescribe regulations for the conduct of the business of his office and the custody of its papers, a breach of which may be treated as an act in violation of the lawful duty of an official or clerk. (*United States* v. *Macdaniel*, 7 Pet. 1, 14.)

While we have no desire to minimize what we have already said with regard to the indictment setting out the substance of the offence in language sufficient to apprise the accused of the nature of the charge against him, still it must be borne in mind that the indictment is merely offered as proof of the charge originally contained in the complaint, and not as a complaint in itself or foundation of the charge, which may be supported by oral testimony as well as by the indictment. When the accused is arraigned in the trial court he may take advantage of every insufficiency in the indictment, since it is there the very foundation of the charge, but to hold it to be the duty of the Commissioner to determine the validity of every indictment as a pleading, when offered only as evidence, is to put in his hands a dangerous power, which might be subject to serious abuse. If, for instance, he were moved by personal considerations, popular clamor or insufficient knowledge of the law to discharge the accused by reason of the insufficiency of the indictment, it might turn out that the indictment was perfectly valid and that the accused should have been held. But the evil once done is, or may be, irremediable, and the Commissioner, in setting himself up as a court of last resort to determine the validity of the indictment, is liable to do a gross injustice.

2. It is further urged in support of this appeal that R. S. Sec. 1014 does not authorize a removal to the District of Columbia, as it is not a District of the United States within the meaning of the law; and the Supreme Court of the District is not a court of the United States, as the words are used in that section. The pertinent words in the section are that "for any crime or offence *against the United States*, the offender may," by certain officers therein designated, "be arrested and imprisoned or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offence, . . . and where any offender or witness is committed in any District other than that where the offence is to be tried, it shall be the duty . . . of the marshal to execute a warrant for his removal to the District where the trial is to be had." It is true that this section was taken from the Judiciary Act of 1789, and at that time the District of Columbia was not in existence. But the same remark may be made of the dozens of different Districts which

have been formed since this act was passed. The fact that the District of Columbia was not created out of territory theretofore unorganized, but was simply carved out of the District of Maryland, is of no more importance than would be the creation of a new District, rendered necessary by an increase of population or business, of which almost every Congress produces an example. Even if this were not so, the re-enactment of this section of the Judiciary Act in 1873 as Sec. 1014 of the Revised Statutes, clearly extended the word "District" to be District of Columbia, as well as to all other Districts created since the Judiciary Act. (*United States* v. *Bowen*, 100 U. S. 508; *Arthur* v. *Dodge*, 101 U. S. 36; *Cambria Iron Co.* v. *Ashburn*, 118 U. S. 57.)

The anomaly in R. S. Sec. 1014, as applied to this District, consists in its limitations to offences "against the United States," since the courts of the District of Columbia have a local as well as a Federal jurisdiction, and may punish for offences, which, if committed within the limits of any other District of the United States, would be relegated to the State Courts. Offenders against State laws escaping from the State where the crime is committed and found in another State are surrendered upon the demand of the Governor, by proceedings taken under a different statute. (R. S. Secs. 5278–5279.) Certain cases are to be found, which hold that persons accused of crimes committed within the District of Columbia, against its local laws, cannot be removed to this District for trial under Section 1014. If this objection might have been a sound one under Sec. 33 of the Judiciary Act, since the Revised Statutes local offences have also been treated as offences against the United States. The question, however, does not arise in this case, since the indictment charges an offence against the United States in violation of Section 5451, respecting the bribery of public officers.

It is unnecessary to decide whether the power to remove offenders found in other Districts to this District is affected by the act of February 21, 1871, (16 Stat. 426,) providing that "the Constitution and all laws of the United States, which are not locally inapplicable, shall have the same force and effect in the District of Columbia as elsewhere within the United States." since by Section 2 of the act of June 22, 1874, (18 Stat. 193,) the provisions of the thirty-third section of the Judiciary Act of 1789, from which R. S. Sec. 1014 is taken, "shall apply to courts created by act of Congress in the District of Columbia." Criticism is made of this act in that it only authorizes a removal *from* the District of Columbia to other Districts, but that it does not authorize the removal of persons arrested in some other judicial district *to* the District of Columbia. But we think that if there were any doubt upon the subject still remaining it was removed by the new code of the District of Columbia, taking effect January 1, 1902, wherein it is declared by Section 61 that the Supreme Court of the District "shall possess the same powers and exercise the same jurisdiction as

the Circuit and District Courts of the United States, and shall be deemed a court of the United States;" and by Section one (1) of the same code that "all general acts of Congress not locally inapplicable in the District of Columbia, and all acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force at the date of the passage of this act, shall remain in force, except in so far as the same are inconsistent with, or are replaced by, some provision of this code."

In conclusion of this branch of the case it may be said that any construction of the law which would preclude the extradition to the District of Columbia of offenders who are arrested elsewhere would be attended by such abhorrent consequences that nothing but the clearest language would authorize such construction. It certainly could never have been intended that persons guilty of offences against the laws of the United States should escape punishment simply by crossing the Potomac River, nor upon the other hand that this District should become an Alsatia for the refuge of criminals from every part of the country.

3. Appellant makes further objection to a removal to the District of Columbia upon the ground that the offence, if any, was committed in California, and that under the Constitution he is entitled to a trial in that jurisdiction.

The objection does not appear upon the face of the indictment, which charges the offence to have been committed within this District, but from the testimony of one of those clerks it seems that the money was received by him in certain letters mailed to him from San Francisco and received in Washington. Without intimating whether the question of jurisdiction can be raised in this way, the case clearly falls within that of *Palliser*, (136 U. S. 257,) in which it was held that where an offence is begun by the mailing of a letter in one District and completed by the receipt of a letter in another District, the offender may be punished in the latter District, although it may be that he could also be punished in the former. A large number of authorities are collated by Mr. Justice Gray in the opinion, and the case is treated as covered by Sec. 731, providing that when an offence is begun in one District and completed in another it shall be deemed to have been committed in either, and be tried in either, as though it had been wholly committed therein. In addition to this, however, it is conceded that some of the offences charged in the various counts were committed in Washington.

There was no error in the action of the court below, and its judgment is

Affirmed.

Supreme Court of the United States.

No. 308.—October Term, 1904.

John A. Benson, Appellant, vs. William Henkel, United States Marshal. } Appeal from the Circuit Court of the United States for the Southern District of New York.

[April 17, 1905.]

Mr. Justice Day concurring.

Mr. Justice White, Mr. Justice Peckham, Mr. Justice McKenna and the writer agree in the conclusion just announced and in the main with the reasoning of the opinion. But we are unable to concur in the view that where the commissioner may be of opinion that the indictment charges no offence against the laws of the United States, and there is no other proof of probable cause before him, the order of arrest may be made, remitting to the court where the indictment was found all questions of the sufficiency of the indictment. We agree that upon the hearing before the commissioner the indictment is *prima facie* to be taken as good, and that no technical objection should prevail against it; its ultimate sufficiency being matter for determination of the court wherein it was returned against the accused, subject to review in the appellate courts. (*Green* v. *Henkel*, 183 U. S. 249.) But the order of removal involves judicial rather than mere ministerial action, and must be issued by the judge of the district when the case made warrants it. (Sec. 1014, Rev. Stat.; *Beavers* v. *Henkel*, 194 U. S. 73–83.) And whether found in the indictment, or as the result of other testimony, the order to remove the accused can only be issued upon a showing of probable cause. (*Green* v. *Henkel*, 183 U. S. *supra*).

In this case the argument chiefly relied upon against the right to issue the order of arrest, and subsequently of removal, rested upon the alleged insufficiency of the indictment to charge any offence within the terms of the statute, because the reports which it was alleged the accused had been bribed to reveal were not then on file and might never be filed in the department. It is said that the commissioner was not required to determine for himself whether the statute applied to such reports, but such objections must be remitted for determination to the court in which the indictment was found. In other words, the order of arrest and commitment may be made, although the commissioner be of opinion that the indictment, in a particular vital to the prosecution of the offence, and which cannot be supplied by other proof, is fatally defective, and the accused is charged

with no offence against the laws of the United States. In our opinion, the commissioner, when the case is thus presented, must pass upon the sufficiency of the indictment. It is his duty to decide whether an offence is charged, with aview to making or withholding the order of arrest, which when made, becomes the basis of an order of removal of a citizen to the place of trial, which may be many miles distant from his home. Such order is proper only in cases wherein probable cause has been shown to believe the accused guilty of an offence cognizable by the laws of the United States in the proceeding pending against him, and for which he is to answer at the place of indictment.

True copy.

Test:

Clerk Supreme Court, U. S.